

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

Sidney St. F. Thaxter, Referee

---

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Telegrapher A. W. Bennett be compensated under Rule 6 of the Telegraphers' Agreement for time consumed in attending investigation at Marshfield, Portland Division, Sunday, January 19, 1941.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant, Telegrapher Bennett, was regularly assigned to a position at Marshfield, Portland Division, daily, except Sunday. Claimant Bennett was instructed by Trainmaster G. H. Moore to attend an investigation to be held at Marshfield, Sunday, January 19, 1941 and Claimant was required to be present at such investigation, 8:00 A. M. to 2:30 P. M. on this date. Normally, Sunday was a day on which Claimant Bennett was never required to perform service of any kind.

**POSITION OF EMPLOYEES:** There is an agreement in effect between the parties to the dispute and this agreement is on file with the Board.

EXHIBITS "A" to "I" are made a part of this submission.

The claim is prosecuted under Rule 6 (c) and Rule 26, which we now quote:

**"RULE 6**

**"Sunday and Holiday Work**

"(c) When notified or called to work on Sundays and the above specified holidays a less number of hours than constitute a day's work within the limits of the regular week-day assignment, employees shall be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty. Time worked before or after the limits of the regular week-day assignment shall be paid for in accordance with overtime and call rules."

**"RULE 26**

**"Discipline—Pay For Time Lost**

"Telegraphers will not be dismissed from the Company's service without fair and impartial hearing unless telegraphers waive such hearing; if suspended pending investigation, such investigation will ordinarily be held within ten (10) days from date of suspension, and telegraphers at investigation or hearing may be accompanied by a telegrapher of his choice (other than a General Officer of his Or-

**OPINION OF BOARD:** Claimant's position had a daily assignment. Sundays were excepted. He was instructed by the Carrier to attend an investigation on a Sunday, his day of rest, and attended from 8:00 A. M. to 2:30 P. M. He was not paid for such attendance and claims the right to recover compensation under one or the other of the following rules:

**"Rule 6**

**Sunday and Holiday Work**

"(a) Telegraphers will not be required to work on holidays, except when necessary to protect the Company's interests.

"(b) Time worked on Sundays and the following holidays: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid for at the pro rata hourly rate when the entire number of hours constituting the regular week-day assignments are worked.

"(c) When notified or called to work on Sundays and the above specified holidays a less number of hours than constitute a day's work within the limits of the regular week-day assignment, employees shall be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty. Time worked before or after the limits of the regular week-day assignment shall be paid for in accordance with overtime and call rules.

"(d) Where two or more telegraphers are employed and the condition of service will permit, one telegrapher may be used on alternate Sundays, except as provided for in Rule 20."

**"Rule 26**

**Discipline—Pay for Time Lost**

"Telegraphers will not be dismissed from the Company's service without fair and impartial hearing unless telegraphers waive such hearing; if suspended pending investigation, such investigation will ordinarily be held within ten (10) days from date of suspension, and telegraphers at investigation or hearing may be accompanied by a telegrapher of his choice (other than a General Officer of his Organization), in the employ of the Company and on same seniority district. Telegrapher accompanying another telegrapher who is under investigation does so at his own expense. Telegraphers found not guilty, as charged, will be reinstated and paid for all time lost."

**"Rule 34**

**Attending Court—Witnesses**

"Employees taken away from their regular assigned duties, at the request of the management, to attend court or to appear as witnesses for the carrier will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place and, in addition, necessary expenses while away from their stations. Any fee or mileage accruing will be assigned to the carrier."

The awards are not in harmony on this particular problem. It seems to us, however, that it is not advisable, even to reach a result which might appear equitable, to attempt to read into a rule something which is not there. The weight of authority, as well as sound reason, supports this principle. The attendance of an employe at an investigation or at court constitutes the

exceptional case and is work performed outside his regular duties. What the employe did in this instance was not "work" as that word is used in Rule 6. Awards 134, 409, 605, 773, 1816.

It is hard to see how Rule 26 has any application to the facts of this case.

Rule 34 does not apply; for it relates only to employes "taken away from their regular assigned duties." This employe was not taken away from his regularly assigned duties nor is it claimed that he incurred any expense.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.