

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad, that F. Baumann, a regularly assigned towerman at the Buffalo River Drawbridge, Buffalo, New York, be paid for a call on June 19, 1943, account having been required by the Carrier to attend an investigation as a witness for the Carrier on this day outside of his regular assigned hours of service.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

F. Baumann on June 17, 1943, was on duty as towerman at Buffalo River Drawbridge, Buffalo, New York, when Baltimore and Ohio Train No. 61 ran by Signal RB-22, which was in stop position and which caused said train to run through the east end of No. 25 crossover.

Outside of his regularly assigned hours, Towerman Baumann was instructed to and did attend an investigation beginning at 8:30 A. M., June 19, 1943, in the Superintendent's Office at Buffalo, to act as a witness for the Carrier. Mr. Baumann was held not responsible in any way for the accident. The Carrier declined to pay Witness Baumann in accordance with Rules 5 and 11 of the Telegraphers' Agreement.

POSITION OF EMPLOYES: Among other rules, the Telegraphers' Agreement contains the following:

"Rule 5—Call Rule

Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

"Rule 13—Court Duty and Investigations

(a) Employees temporarily engaged in business of the Company outside the line of their regular duties, at court or otherwise, will be paid their regular wages and necessary expenses while so engaged, court fees and mileage to be assigned to the Company.

(b) Employees required to attend investigations, will be paid for all time lost if not at fault."

The following quoted letters which have been exchanged between the parties on the dates indicated can best tell the details of the dispute:

Award 8169—First Division

The employees also cited Rule 5 as being applicable to this claim when presented on the Carrier's property but which is silent in the notice of the intention to submit this claim to your Board.

Rule 5—Telegraphers' Schedule, reads:

Call Rule—

Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

This rule is silent as to investigations. Accordingly, the Board will not read into it something which is not there. To do so by fiat would create a new rule, which is beyond the power of the Board.

"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 support this principle."

Award 2132—Third Division

Moreover, Rule 13 is a **specific rule**, and specific rules always take precedence over general rules.

"This rule is **specific** * * *. In the fact of it the rules relied upon by the claimant have no bearing on the issue. Claim denied."

Award 2512—Third Division

So held by the U. S. Supreme Court:

"Where there are two clauses in any respect conflicting that which is specially directed to a particular matter controls in respect thereto over one which is general in its terms although within its general terms the particular may have been included."

193 U. S. 551,558

"By far the greater number of decisions hold that attendance upon investigations does not constitute 'work' in contemplation of the basic day, overtime and call rules."

Award 2512—Third Division

This claim is not supported by the Schedule rules and is negated by long established interpretation and practice on this property—it is without merit and the Carrier respectfully submits that it should be denied.

OPINION OF BOARD: Claimant, a regularly assigned Towerman at Buffalo River Drawbridge, Buffalo, New York, seeks pay for a call on June 19, 1943, by virtue of having been required by Carrier to attend an investigation as a witness for Carrier, outside of Claimant's regularly assigned hours of service. The investigation was conducted in the office of Superintendent at Buffalo concerning Baltimore and Ohio Train No. 61, which passed a signal in stop position and ran through the east end of No. 25 crossover. Claimant was in no way responsible for the accident.

The same principle here involved was thoroughly and ably discussed by Referee Shake in the recent case 2824, dated February 28, 1945. Though 2824 involved the case of a chief caller of train and engine crews, the rule governing employe there as to compensation for time spent in attending investigation for Carrier, is substantially the same as the Telegraphers' rule here under consideration.

After pointing out the conflict of opinion that has arisen in various awards and the necessity for clarification thereof, Referee Shake closes his discussion with this pertinent language:

"Considering the express language of the rule here before us and the fact that the investigation which the claimant was required to attend was in no wise associated with her assigned duties, either by reason of the nature thereof or in point of time, but was for the exclusive benefit of the Carrier, we have concluded to allow this claim. To hold otherwise would place us in the unenviable position of saying that a person's particular services may be demanded without just compensation. This we are unwilling to do."

The Opinion in 2824 is expressly made a part hereof by reference. We reaffirm and follow the conclusion therein expressed.

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

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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1945.