

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Sidney St. F. Thaxter, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**MISSOURI PACIFIC RAILROAD COMPANY**

**(Guy A. Thompson, Trustee)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Railroad, that A. S. Bryan, regularly assigned second trick telegrapher-towerman at Grand Avenue, St. Louis, Mo., with the assigned hours 4:00 p.m. to 12:00 o'clock midnight, who was required by the carrier to attend an investigation 9:30 a.m. to 1:30 p.m. on Monday, March 27, 1944, solely as a carrier witness, shall be paid for these hours of service under "NOTIFIED OR CALLED" Rule 10 (c) of the Telegraphers' agreement.

**EMPLOYES' STATEMENT OF FACTS:** An agreement, bearing date June 1, 1942, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

A. S. Bryan was on duty on March 16, 1944 as Telegrapher-Towerman at Grand Avenue Tower when Missouri Pacific Train Number 17 was derailed at this tower.

On March 27, 1944, the Carrier conducted an investigation into the cause of the derailment, commencing 9:30 a.m. and ending at 1:30 p.m. The Carrier instructed Towerman Bryan to attend this investigation solely as a carrier witness, and he was present during these hours of the investigation. For this service, towerman filed a time slip for (1 call and two hours overtime) or four hours at time and one-half under the provisions of Rule 10-(c) of Telegrapher's Agreement.

The Carrier declined to pay towerman Bryan for this call.

**POSITION OF EMPLOYES:** This dispute and claim arises from and involves the application of the provisions of "OVERTIME OR CALLED" Rule 10-C of the telegraphers' agreement between the carrier and the organization, which reads as follows:

"NOTIFIED OR CALLED: Employees notified or called to perform work not continuous with the ending of their regular work period will be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis, except that the bulletined hours of service of telegraphers at offices where one shift only is employed, may be established to permit the meeting or starting of regular scheduled trains on their time-table not more than one hour before the com-

Because:

1. The rules under which the claim is made are not applicable because no time was lost or no work performed,
2. No other rule in the agreement supports the claim,
3. There is no practice or precedent to justify the claim,
4. Claimant had had at least full 8 hours of rest after going off duty at 12 midnight, March 26, before attending the investigation at 9:30 a.m., March 27, 1944, and was, therefore, not deprived of his rest period, and
5. The General Committee is attempting to get this Board to write an entirely new rule inconsistent with the established customs and practices of long-standing,

the Carrier respectfully submits that the claim should be denied.

**OPINION OF BOARD:** The claimant, whose hours of work were from 4 p.m. to midnight, was required by the carrier to attend an investigation from 9:30 a.m. to 1:30 p.m. on March 27, 1944. He submits a claim for four hours' pay under the provisions of Rule 10 (c) which reads as follows:

"OVERTIME: Rule 10 (c) NOTIFIED OR CALLED: Employees notified or called to perform 'work' not continuous with the ending of their regular 'work' period will be allowed a minimum of three hours for two hours 'work' or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis, except that the bulletined hours of service of telegraphers at offices where one shift only is employed, may be established to permit the meeting or starting of regular scheduled trains on their timetable not more than one hour before the commencing time shown in this agreement. Such time (one hour or less) required to report before 6:00 a.m. will be paid for on the minute basis at the rate of time and one-half."

There is no rule of the agreement providing for pay for attendance by an employe at an investigation instituted by the carrier. Rule 6 provides for compensation and reimbursement for expenses when an employe at the request of the carrier attends court or appears as a witness for the carrier in court proceedings. Both sides, however, agree that this rule has no application here. To come within Rule 10 (c) the attendance by this employe must be regarded as "work" as that word is used in the rule.

This question has been discussed in a number of awards, which, though not uniform, have fairly consistently held that attendance at an investigation is not "work" as that work is used in the rules. Awards 134, 1032, 1816, 2132, 2508, 2512.

The parties could have specifically provided by a special rule for payment for time spent while on such duty. The fact that there is no such rule may well indicate that they were unable to agree on this problem. Under such circumstances this Board is without power to intervene. We cannot write a rule on the failure of the parties to agree, nor should we by a forced construction apply another rule in a way in which they did not intend.

**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

There is no basis for an affirmative award.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: H. A. Johnson,**  
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.