

Award No. 4181

Docket No. TE-4189

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company that W. K. Smith, N. W. Minnich and S. J. Wanamaker, regularly employed at Birdsboro, Pennsylvania, on the date involved shall each be additionally paid \$4.80 which represents pay for four hours' time lost and/or consumed by each on June 18, 1947, when and because they were instructed to and did attend rules examination classes at Reading, Pennsylvania.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, bearing effective date of April 1, 1946, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

By a communication dated June 16, 1947, W. K. Smith, N. W. Minnich, M. A. Dadamio and S. J. Wanamaker, regularly employed at "BE" Tower, Birdsboro, Pennsylvania (a facility jointly operated by the Reading Company and the Pennsylvania Railroad) rate of pay \$1.20 an hour, were instructed by an officer of the Reading Company to attend Pennsylvania Railroad rules class at Reading, Pennsylvania, June 18, 1947. Each employe complied with instructions, each lost and/or consumed four hours time traveling and attending class and each used his private automobile for transportation, Birdsboro to Reading and return, 20 miles at 4½ cents a mile.

Mr. Dadamio, because June 18, 1947, was his rest day, made claim for four hours' time at \$1.80 an hour (time and one-half rate), or \$7.20, plus automobile allowance of 90¢, a total of \$8.10. The Carrier allowed the claim.

Messrs. Smith, Minnich and Wanamaker, each, made claim for four hours time at \$1.20 an hour, or \$4.80, plus automobile allowance of 90¢, a total of \$5.70. The Carrier paid to each claimant the mileage allowance as claimed, but declined to pay the \$4.80 covering time lost and/or consumed.

POSITION OF EMPLOYES: As indicated briefly in the Employees' Statement of Facts, W. K. Smith, N. W. Minnich and M. A. Dadamio are regularly employed six days a week (each is assigned one rest day) at "BE" Tower, Birdsboro, Pennsylvania, as towermen, rate of pay \$1.20 an hour. "BE" tower is a facility jointly owned and operated by the Reading Company and Pennsylvania Railroad. June 18, 1947, the date involved in this proceeding was Dadamio's rest day, hence the regular relief employe, S. J. Wanamaker, was regularly employed at Birdsboro on this date. June 16, 1947, each, Smith, Minnich, Dadamio and Wanamaker received the following telegram from a Reading Company Officer:

examinations as the employees are required to attend on rest days. In substantiation of the Carrier's understanding, it is desired to cite the circumstances leading up to the adoption of Article 25, and submit that in connection with the agreement of April 1, 1946, The Order of Railroad Telegraphers submitted a proposed rule with regard to attending court, hearings, etc., reading as follows:

"Employees required to attend court, hearings, investigations, inquests, etc., or take examinations by direction of an officer of the Company shall be furnished free transportation and shall be paid for time lost and/or consumed at the rate of the position occupied; in case of an extra employe, the minimum rate on the seniority district will apply. Such service performed for the Company on rest days will be paid for at time and one-half rate. In all cases actual necessary expenses incurred while away from home will be allowed. Any fees or mileage will accrue to the Company." (Emphasis supplied.)

It will be noted that examinations were specifically mentioned and referred to in the first sentence of the proposed rule, which would have required that employes be compensated for undergoing all kinds and characters of examinations.

The Carrier's representative advised the Telegraphers' Committee that it was not agreeable to the provisions of the rule as proposed as payments were not made to any other employes for undergoing examinations and if such request was granted to the Telegraphers' organization it would establish a precedent and require similar payments to employes under other agreements. However, The Carrier was agreeable to considering the matter with a view of covering the examination requirements as far as practicable with a minimum of inconvenience and loss of time. The Carrier was also willing to consider payment to the employes when required to attend or take examinations on their rest days.

After extended discussions and negotiations, it was the Carrier's understanding that employes would not be compensated for undergoing examinations, unless required to attend or take examinations on their rest day, in which event payment would be made at the rate of time and one-half, which was the same as the penalty imposed if the employe was required to work on his rest day, and the rule was drafted on that basis and agreed to as it appears in the effective agreement.

The provisions of Article 25 as set forth and agreed to are entirely clear and it must be obvious beyond question that inasmuch as examinations are not mentioned or referred to in the first sentence of the rule that the only payment required in connection with examinations is for such examinations as are performed on the employes' rest days.

Under the facts and circumstances set forth in the foregoing, Carrier submits that the only provision in the effective Telegraphers' agreement pertaining to payment for examination is contained in Article 25, in which it is specifically set forth that examinations performed on rest days will be paid for at time and one-half rate. In the instant case, the rules examination was not performed or conducted on the rest days of the claimants. Therefore, they are not entitled to payment nor is the claim as submitted supported or sustained by the rules, and Carrier requests the Board to so find and deny same.

OPINION OF BOARD: The facts are not in dispute. The four employes included in the claim attended a rules examination at Reading, Pennsylvania, being instructed to do so by the Carrier. The claim is for four hours each at \$1.20 per hour. The time consumed was after the regular assigned working hours. Another employe was originally involved, however, the examination was held on his relief day and the Carrier paid him at the agreed rate governing the situation.

The Carrier relies on several awards and bases resistance to payment of Claim of the four employes on the premise that the rules examination was held for the mutual benefit of employe and Carrier.

Employes rely on Article 25 of the Agreement:

"Employes required to attend court, hearings, investigations or inquests by direction of an officer of the Company shall be furnished free transportation and shall be paid for time lost and/or consumed at the rate of the position occupied; in case of an extra employe, the minimum rate on the seniority district will apply, except that if an employe is finally held responsible following an investigation or hearing, no pay allowance will be made. Such service, including examinations, performed on rest days will be paid for at time and one-half rate. In all cases, actual necessary expenses incurred while away from home will be allowed. Any fees or mileage will accrue to the Company."

The awards cited are somewhat in conflict. However, the fact situations vary in accordance with the nature of the demand, that is, some deal with investigations in which the employe involved was being investigated to learn among other things as to his part in the matter being investigated. Where he was relieved of all blame the matter arises to his being paid. Where he was found to have been at fault under rules governing, he was denied pay for time spent in attendance at the investigation.

Other cases deal with physical examinations, others with accidents, insubordination, discipline, discharge, etc. As will be readily seen there is a clear line of demarcation in cases where employe was directly involved in an investigation and in others which he was not directly involved.

The Organization cites Awards 3966, 2032, 1545, 2824, 3302, 3478, 3722, 3911 and 3912. On behalf of the Carrier were cited Awards 487, 1427, 2508, 2828, 3230 and 3987. The Carrier also calls attention to the fact that employes originally proposed to include in the first sentence of Article 25, the words: "or take examinations," in addition to the words: "attend Court, hearings, investigations, inquests, etc.," and contend that the elimination of the proposed phrase: "or take examinations" and the placing of the word: "examinations" in the second sentence, only, of the Rule, pay for examinations was limited to that which was specified in the second sentence, i. e., pay on rest days at time and one-half rate.

While negotiations leading to an agreement of a provision in any contract may be of value as showing the intent of the parties in making the Agreement, yet, the finished product is the instrument with which we have to deal. Therefore, regardless of what the parties to an Agreement may have intended, the wording of the Rule under consideration is the basis for interpretation.

In examining Rule 25, we find in the first sentence certain specific functions which employes may be required to attend and provisions for free transportation, also payment to be made for time lost and/or consumed. Also conditions governing these payments. Now the second sentence starts with the words: "Such service, including examinations, performed on rest days will be paid for at time and one-half rate. * * *"

It would seem that the words: "Such service" relate alone to the benefits to be derived from the subject matter considered in the second sentence, i. e., time and one-half on rest days. And that where "examinations" are not included in the first sentence of Rule 25, but are placed in the second sentence that its application is limited to payment under certain conditions on rest days. The clearly expressed intent of Rule 25 is to give compensation for examinations on rest days, and not otherwise.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of November, 1948.