

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the Agreement by failing to compensate B&B Motor Car Operator A. E. Gossett, Mangham, Louisiana, a day's pay account of his reporting to the doctor at Monroe, Louisiana on January 28th, 1948, to take a physical examination;

(2) That Claimant A. E. Gossett be compensated one day's pay at his pro rata rate because of the Carrier's violation of the Agreement referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: A. E. Gossett as of February 28, was a B&B Motor Car Operator on the Louisiana Division. He was on January 28, 1948 located at Mangham, Louisiana.

Under date of January 20, 1948 the Carrier issued Circular No. 48 which was posted on all Bulletin Boards on the Carrier's property, Circular No. 48 instructed all foremen, assistant foremen and motor car operators to submit to a physical examination by the Carrier's doctors at their convenience. In accordance with such a bulletin notice, Motor Car Operator A. E. Gossett on January 28, 1948 reported to the doctor at Monroe, Louisiana for his physical examination. Because of the fact that this claimant traveled from Mangham to Monroe and return, plus the necessary time spent in the doctor's office, he performed no other service for the Carrier on that date. But, the Carrier refused to compensate him for his day's pay. The Carrier has refused to pay this claim on the basis that no specific instructions were given these employees as to the time and date of the taking of their physical examination.

The Agreement in effect between the two parties to this dispute, dated July 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 25 of the effective Agreement states as follows:

"Employees in temporary or emergency service, except as provided in Rule 21, required by the direction of the management to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at the pro rata rate.

This is just another effort on the part of the organization to persuade your board to write a rule in the agreement where none now exists while at the same time being fully aware of the fact that your board has no authority to write rules, but only to interpret existing rules.

This claim, therefore is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On January 20, 1948, Carrier issued Circular No. 48 to the effect that an examination of certain employes on vision, color sense and hearing would be conducted, commencing February 1, 1948 and to be concluded by March 1, 1948. Claimant was a B&B Motor Car Operator and as such was required to comply with Circular No. 48.

On January 28, 1948, Claimant went from his location at Mangham, Louisiana, to Monroe, Louisiana, where he reported to a Carrier physician and completed his examination. He claimed pay for January 28, 1948, for performing this service.

We point out that Circular No. 48 required the examination to be taken as early after February 1, 1948 as convenient in order to expedite the work of the medical examiners. Claimant was not working on January 28, 1948, because of inclement weather. He was not directed to report to a physician at Monroe, Louisiana, on January 28, 1948, or on any other day. In fact, he was not directed to perform any service for the Carrier on that day. He performed it entirely upon his own volition and prior to the time specified in Circular No. 48. The examination of claimant on January 28, 1948 was not authorized by the Carrier. If an employe is permitted to disregard the instructions of the Carrier and to create liability for services rendered by so doing, the control of railroad operations and the expedition of its work would soon be in confusion. The control of work assignments is the prerogative of management except as limited by agreement with the employes. While there may be equitable reasons favorable to this claimant, there is no agreement that requires the Carrier to pay for the claimed service when it is done contrary to and outside the time fixed in the directions issued. A denial award is in order.

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, as approved June 21, 1934;

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 26th day of June, 1950.