# Award No. 4911
# Docket No. TE-4946

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Jay S. Parker, Referee**

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## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## THE NEW YORK CENTRAL RAILROAD COMPANY (Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York Central Railroad Company, Line West of Buffalo,

(1) That the Carrier violated the terms of the Telegraphers' Agreement it required J. T. Cosgrove, second trick operator at Steelton, Ohio, to attend investigation at Columbus, Ohio, commencing 8:00 A.M., June 16, 1949, as a Carrier witness, and has failed and refused to compensate him in accordance with the rules of the Telegraphers' Agreement; and

(2) That operator J. T. Cosgrove shall be compensated on a call basis for the time he was away from his home and for services rendered at the investigation outside of his regular assigned hours on June 16, 1949.

EMPLOYES' STATEMENT OF FACTS: Mr. J. T. Cosgrove was assigned as second trick telegrapher at Steelton, Ohio, working 3 P.M. to 11 P.M. On June 14, 1949 he received the following telegram from the Chief Train Dispatcher who is his immediate superior officer:

"Please report to General Yardmaster's office West Columbus 8 A.M., Thursday, June 16 for investigation in connection with yard crew violating Rule 513 and Rule 99 South Columbus about 3:45 P.M. June 10."

Telegrapher Cosgrove arrived at General Yardmaster's office at 7:45 A.M.; the investigation began at 8:15 A.M. and ended at 9:55 A.M. Ordered to the investigation in addition to Cosgrove were two engineers, one conductor, two firemen, and three brakemen.

Rule 99 reads:

"99. When a train stops under circumstances in which it may be overtaken by another train, the flagman must go back immediately with flagman's signals a sufficient distance to insure full protection, placing two torpedoes, and when necessary, in addition, displaying lighted fusees. When recalled and safety to the train will permit, he may return.

"When the conditions require, he will leave the torpedoes and a lighted fusee.

2. Article 19, the "Attending Court or Investigation" rule, the only Agreement rule which pertains to time attending investigations, provides for payment only when employe loses time from his regular assignment;

3. Claimant lost no time from assigned working hours and performed no work;

4. The Telegraphers' request to revise Article 19—included in Mediation which is still pending—so as to extend application of the Call and Overtime rules to time attending investigations is conclusive evidence that existing rules do not support the claim;

5. Awards of the National Railroad Adjustment Board support the carrier's position;

6. The claim is tantamount to a request for a new rule wholly incompatible with accepted practices in effect under the same or comparable rules for over 45 years;

7. The claim is not supported by Agreement rules, is without support on any reasonable premise and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: J. T. Cosgrove, the claimant, a regular relief employe, worked the 3 to 11 P.M. position as a Telegrapher at the Carrier's Frankfort Street Interlocking Tower at Steelton on June 10, 1949, and on June 16, 1949. On the date last named the Carrier required him to attend an investigation held by it at Columbus for the purpose of determining the facts and fixing the responsibility for a violation of its operating rules when one of its engines entered the main track at the switch from the freight house lead, 1.6 north of Steelton, at 3:45 P.M., on Friday, June 10, 1949. Claimant lost no work by reason of attending the investigation.

The notice or telegram received by Cosgrove from the Chief Train Dispatcher directing him to report at Columbus for the investigation read as follows:

> "Please report to General Yardmaster's office West Columbus 8 A.M., Thursday, June 16, for investigation in connection with yard crew violating Rule 513 and Rule 99 South Columbus about 3:45 P.M. June 10."

The claim is for compensation on a call basis for the time Cosgrove was away from his home and for service rendered at the investigation outside of his regular assigned hours on the date in question.

The claimant relies on Rule 5 of the Agreement, commonly known as the Call Rule, to support a sustaining Award while the Carrier insists that Rule 19 of the same contract, relating to attendance at court or investigations, renders the Call Rule inapplicable and precludes the allowance of any compensation whatsoever under its terms and the facts and circumstances here involved.

The particular issue thus raised is the same as that decided in Award 4909, where we held that employes who are required by the Carrier to attend investigations outside the hours of their regular assignments or on their rest days are entitled to recover compensation under Rule 5 of the instant Agreement for their attendance unless it appears from the record there is a mutuality of interest in the result of the investigation between the Carrier and the employe. We adhere to that Award and by reference adopt and make a part of this Opinion what was there said and held respecting liability of the

Carrier under the Call Rule in situations of the kind and character there and here in question.

Thus, we are confronted with the question whether under the facts and circumstances of the instant case the parties were mutually interested in the investigation. The Carrier asserts the claimant was directly involved because shortly after he went on duty he talked to the Head Brakeman of the involved freight engine. There might be circumstances under which such a conversion would be highly indicative of personal interest or involvement. However, in this instance the record does not bear it out. No one denies claimant received the telegram to which we have heretofore referred. It states in clear and unequivocal language that the Carrier was holding the investigation in connection with the yard crew violating its rules. Moreover, the transcript of evidence taken at the investigation contains no indication to the effect the Carrier at any time regarded the claimant's action in talking with the brakeman as the proximate or a concurring cause of the accident under investigation. In such a situation we are impelled to conclude the claimant had no direct personal concern in the investigation and therefore had no mutuality of interest therein. In fact, our later discussions so hold. See, e.g., Awards Nos. 3478, 3722 and 3970.

What has just been stated requires an allowance of compensation under Rule 5 for the time spent at the investigation in compliance with the Carrier's requirements.

We note the claim is for the entire time spent away from home. The record as we read it does not disclose where claimant's home was located or the entire time he was away therefrom because of the investigation . All it shows is time at the investigation. Therefore, we need not here labor this phase of the claim. The most claimant is entitled to under the instant record is whatever pay he would be entitled to at the call rate for time actually spent at the investigation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 under the conditions and circumstances set forth in the Opinion claimant is entitled to be compensated under the provisions of Rule 5 of the Agreement for time actually spent by him while in attendance at the investigation in question.

AWARD

Claim sustained in accord with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.