

Award No. 4912
Docket No. TE-4947

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

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 when it required F. J. Grady, First Trick Operator at Buckeye Road, Cleveland, Ohio, to attend an investigation at Collinwood, Ohio commencing at 4:30 p.m., on May 7, 1948, 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 F. J. Grady shall be compensated on a call basis for services rendered at the investigation outside of his regular assigned hours on May 7, 1948.

EMPLOYEES' STATEMENT OF FACTS: Mr. F. J. Grady was regularly assigned first trick telephoner-switch tender at Buckeye Road, Ohio, working daily except Friday, his rest day. He was ordered by the carrier to report to the Trainmaster at Collinwood, Ohio, 4:30 p.m. Friday, May 7, 1948, for investigation in connection with damage to Engine 725 and car NYC 847893, at approximately 2:10 p.m., May 1, 1948, on Yard Track, Buckeye to Kingsbury. Ordered to the investigation in addition to Grady were the Engineer and Fireman of Engine 725.

Appended is Employees' Exhibit "A" which is a transcript of the investigation and by reference is made a part of this Statement of Facts. The transcript will prove that Grady's attendance at the investigation was only as a witness for the carrier.

Friday, May 7, 1948, the day of the investigation, was Grady's scheduled rest day but because of a shortage of operators he was required to work his regular trick that day for which he was paid at rate of time and one-half. After working his assignment that day he reported to the Trainmaster at Collinwood, Ohio, six miles distant. Grady was not at fault in any way, was not charged nor disciplined and filed claim for a call of 3 hours' pay at rate of time and one-half for attending this investigation on his rest day and during his off duty hours. Claim was denied.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing effective date of July 1, 1946, copies of which are on file with the Board, and from which the following rules are cited:

contained that 'employees notified or called to perform work not continuous with the regular work period' precludes any notion that it was intended to include attendance of class lectures on operating rules. The word 'work' as herein used was never intended to have such a generic meaning as the Organization here contends. Awards 2508, 2512, 3230, 4181. If it had been so intended, there would have been no reason for including Article XVIII in the current Agreement."

CONCLUSION

The carrier has shown that—

1. The Call Rule, Article 5, under which the claim is made, has not at any time been applicable to time attending investigations;
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: On May 1, 1948, one of Carrier's engines ran into and collided with the rear end of one of its trains between Buckeye Road and Kingsbury Road. Just prior to and at the time of the collision Claimant F. J. Grady, who held a regular assignment 7 a.m. to 3 p.m. as Telephone-Switchtender at Buckeye Road, was on duty. In fact, the record discloses that he gave the instructions authorizing the involved engine to move between the two points in question.

The Carrier required claimant to attend an investigation at Collinwood for the purpose of determining the facts and fixing the responsibility for the collision between the engine and train. Grady, who had worked his regular assignment, attended the investigation, losing no time as a result of such action. He claims pay on a call basis for time while in attendance at the investigations.

Except for the factual situation disclosed by the record, which we are convinced clearly reveals that the claimant did not attend the investigation as a witness in furtherance of the Carrier's interest but as an employe who was directly concerned with its outcome, this case is in all respects similar to the one decided by our Award 409. Therefore, such Award is decisive of the cause and compels the denial of an affirmative Award.

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 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

That the factual situation disclosed by the record precludes recovery of compensation under Rule 5 of the current agreement.

AWARD

Claim denied.

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.