

Award No. 4913
Docket No. TE-4948

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 J. F. Craney, second trick Leverman at "CT" Tower, Cleveland, Ohio, to attend an investigation at Cleveland, Ohio, commencing 1:30 P.M., February 18, 1947, as a Carrier witness and has failed and refused to compensate him in accordance with the rules of the Telegraphers' Agreement; and
- (2) That Leverman J. F. Craney shall be compensated on a call basis for services rendered at the investigation outside of his regular assigned hours on February 18, 1947.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. F. Craney was assigned second trick Leverman at "CT" Tower, Cleveland Union Terminal, Ohio, on the evening of February 18, 1947. He was ordered by the Carrier to report at the Assembly Room of the Cleveland Union Terminal 1:30 P.M., February 18, 1947, to attend an investigation in connection with electric Motor 204 passing signal 346, displaying "stop" indication, and running through No. 348 interlocking switch at C. U. T., 10:19 P.M., February 18, 1947. Ordered to the investigation in addition to Craney was the Engineer of Motor 204.

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 Craney's attendance at the investigation was only as a witness for the carrier.

Craney 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 investigation during his off duty hours. Claim was denied. It should be noted that Craney was not called to testify as the Engineer admitted guilt. And in denying the claim the Superintendent said "I cannot agree that acting as a witness would constitute performing service." Thus admitting that Craney was merely there as a witness.

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:

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: This claim is for any pay on "call" basis, under Rule 5 of the current Agreement for time in attending an investigation at the Carrier's direction.

The undisputed facts can be stated thus: Claimant Craney, regularly assigned 3 to 11 p.m., as Leverman in "CT" Tower, Cleveland, was on duty when on February 13, 1947, one of the Carrier's electric motors passed signal 346, displaying "stop" indication, and ran through No. 348 interlocking switch at the Cleveland Union Terminal; the Carrier required claimant to attend an investigation which was held outside the hours of his tour of duty; pursuant to such requirement Craney attended the investigation; in doing so he lost no time from his regular working hours.

Disposition of the claim depends upon our decision of two questions. The first question is whether Rule 5 (the Call Rule) is applicable and requires payment of compensation to employes attending investigations in the absence of mutuality of interest between Carrier and employe. The second is whether under the facts of the instant case the record discloses a mutual interest in the investigation attended by claimant.

The first question was decided by this Division in Award 4909 and Award 4911. We adhere to these decisions. Therefore such question must be answered in the affirmative.

The answer to the second question cannot be disposed of without further resort to the record. There in Carrier's ex parte submission we find the statement, "He (claimant) was required to attend the investigation so that his testimony as to the signal indications at the time of the incident would be readily available." There it affirmatively appears the conductor of the involved electric motor admitted he was responsible for the incident and that claimant was not even used as a witness. And there we fail to find anything susceptible of a construction that the Carrier at any time had contended the claimant had failed to properly perform the duties of his position.

The foregoing facts and circumstances compel the conclusion claimant attended the investigation as a witness in the interest of the Carrier. Therefore, based on Awards 4909 and 4911 the claim must be sustained.

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 Employees 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 claimant should be paid under the provisions of Rule 5 of the current Agreement for time at the investigation.

AWARD

Claim sustained.

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.