

Award No. 4914
Docket No. TE-4949

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 C. L. Mock, third trick operator "SC" office, Chicago, Illinois, to attend an investigation at Elkhart, Indiana, on Wednesday, September 8, 1948, his assigned rest day, as a carrier witness, and has failed and refused to compensate him a day's pay at rate of time and one-half for this service; and
- (2) That Operator C. L. Mock shall be compensated for a day's pay at time and one-half for services rendered the Carrier on this his assigned rest day of Wednesday, September 8, 1948.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. L. Mock was assigned third trick operator at "SC" Office, Chicago, Illinois, and worked from 11:00 P.M., September 7, to 7:00 A.M., September 8, 1948. September 8 was his assigned rest day starting at 7:00 A.M. He was ordered by the Carrier to report to the General Yardmaster's Office, Elkhart, Indiana, 11:30 A.M., September 8, 1948. Ordered to the investigation in addition to Mock were Clerk in Chief Dispatcher's office at Chicago, Operators Romine and Glubka working in "SC" office, Chicago and 3 operators working in "BC" office at Elkhart, Indiana.

Mock left Chicago on train No. 46 at 9:30 A.M., but did not have time to go home after quitting work and had to remain at the station until train departure time. He returned from Elkhart on train No. 59 arriving Chicago at 3:00 P.M. This spoiled his day off.

Glubka was paid for the day he lost. Romine who was on vacation was given an extra day's vacation with pay.

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 Mock's attendance at the investigation was only as a witness for the Carrier.

Mock was not at fault in any way, was not charged nor disciplined and filed claim for a day's pay at rate of time and one-half for attending investigation during his rest day. On August 10, 1949, General Manager Wiegele

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: Claimant Mock is a Relief Wire Chief-Telegrapher in "SC" Relay Office, Chicago. He was required by the Carrier to attend an investigation at Elkhart, Indiana, on Wednesday, September 7, 1948, which was the rest day of the relief position then held by him. In order to reach Elkhart at the hour fixed for the meeting he left Chicago by train at 9 a.m. After it was over he returned at the earliest possible moment, reaching Chicago at 3 p.m.

The claim is for a day's pay at time and one-half for attending the investigation on claimant's rest day.

Resort to the record discloses that for some time prior to September 4, 1948, there had been a fire in the cinder foundation under the "BC" office at Elkhart accompanied by smoke and fumes which made it difficult and troublesome for the telegraphers at that point to do effective work. As a result complaints were made regarding the handling of Company telegraph traffic between the Elkhart and Chicago offices and the Carrier decided to hold an investigation in connection therewith.

On the date last mentioned the claimant made a notation on the "SC" office record reading, "BC says send all to RT acct fire under his office." This fact was known to the Carrier at the time it called the investigation and we are unable to find anything in the record indicating the entry was erroneously made or that the Carrier ever accused claimant of any infraction of duty in making it. In fact, during the course of the investigation Carrier's representative in questioning one of the telegraphers of the "BC" office said: "This message was received by Operator Mock on that date. Do you recall sending it?" Under such conditions and circumstances we think it is clear claimant was called as a witness and not as a principal who had a mutuality of interest in the investigation.

What has been heretofore related makes it crystal clear this case is governed by our Opinion in Award No. 4911. Therefore, in conformity with what was there decided we hold that claimant is entitled to pay on a call basis under the provisions of Rule 5 of the current Agreement.

Claimant insists that since he was called on his rest day he is entitled to a full day's pay at the punitive rate. We do not agree. His rate of pay is governed by the rule on which his right to recover compensation for attending the investigation depends.

To avoid uncertainty, one other question should be briefly mentioned and disposed of. We note claimant states he did not have time to go to his home after completing his regularly assigned tour of duty on the preceding day before taking the train to Elkhart and should receive pay for the time spent in waiting for the train. Again we are compelled to disagree. Even so, claimant's time was his own to do with as he pleased. In such a situation he was not working for or serving the Carrier's interest. Under the facts of this case he is only entitled to pay from the time he left Chicago until he returned.

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 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 claimant is entitled to be compensated under provisions of Rule 5 of the Agreement.

AWARD

Claim sustained to the extent indicated in the Findings and Opinion.

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.