

Award No. 4916
Docket No. TE-4951

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 B. C. Bair, second trick telegrapher-leverman, Willoughby, Ohio, tower, to attend an investigation at Ashtabula, Ohio, commencing 9:30 A.M., on December 17, 1946, as a carrier witness, and has failed and refused to compensate him in accordance with the rules of the Telegraphers' Agreement; and

(2) that telegrapher-leverman B. C. Bair shall be compensated for three and one-half hours at time and one-half on a call basis for the time he was away from his home station and for services rendered at the investigation outside of his regular assigned hours on December 17, 1946.

EMPLOYEES' STATEMENT OF FACTS: Mr. B. C. Bair was regularly assigned second trick telegrapher-leverman at Willoughby Tower, Ohio, with assigned hours 3:55 P.M. to 11:55 P.M. He was ordered to report to the Trainmaster at Ashtabula, Ohio, 36 miles away, at 9:30 A.M., December 17, 1946 to attend an investigation in connection with an automobile reported trapped between the highway crossing gates at Willoughby Tower about 11:10 P.M., December 8, 1949.

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 the occurrence for which he was ordered into the investigation is a common one incident to that particular location and there was no way for him to avoid it; that it is necessary to put the gates down when trains are approaching the crossing in order to stop traffic and if motorists do not stop when gates are being lowered it is the motorist who is at fault and not the operator; that if the gates remained up when one motorist disregarded the warning bells and lights, all following motorists would likewise disregard the warnings and the gates would not be lowered in time to prevent accidents; that the information secured from claimant could have been obtained in an exchange of letters instead of requiring him to travel 36 miles in each direction in his own auto and at his own expense, as he was not reimbursed, and on his own time; that the investigation was held for the purpose of absolving the Carrier from any suit which might be brought against it account of an unsafe condition over which claimant Bair had no control; that the investigation insofar as Bair was concerned was merely to get a statement

'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 not 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: The factual situation here involved is not in controversy and can be briefly summarized.

On December 8, 1946, Carrier's Police Department received a complaint that on the eve of the preceding day, at about 11:16 P.M., an automobile had been trapped between its crossing gates at Vine Street crossing, Willoughby, Ohio. The claimant, B. C. Bair, held a regular assignment, 3:55 to 11:55 P.M. as Telegrapher-Leverman at Willoughby Tower.

The warning bell, signal lights and crossing gate at Vine Street crossing are manually controlled by the Leverman in Willoughby Tower and claimant was the leverman on duty at the time of the occurrence of the incidence resulting in the complaint and a subsequent investigation.

The Carrier required the claimant to attend an investigation to determine facts in connection with the involved incident. There is some quibble about it but from the facts disclosed by the record it is obvious the investigation was held for the purpose of ascertaining whether claimant, as the employe is sole charge of the Tower at the time the incident occurred, was guilty of any violation of duty which might subject him to discipline and/or the Carrier to liability in an action predicated upon negligent operation of the crossing gates.

Assuming as we must (see Awards 4909 and 4911) that unless claimant was mutually interested in the investigation Rule 5 of the Agreement would be applicable, we have no difficulty in concluding that under the facts and circumstances heretofore related claimant did have a personal interest and

direct concern in the matter being investigated. Therefore under our decisions there was a mutuality of interest in the investigation and his claim for pay on a call basis must be denied.

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 Employee involved in this dispute are respectively carrier and employee 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 facts and circumstances disclosed by the record preclude claimant's recovery 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.