

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD,
BUFFALO AND EAST**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East; that,

(a) the Carrier violated the provisions of the Telegraphers' Agreement when it denied payment of necessary actual expenses to Telegrapher-leverman Earl M. Campbell while away from place of employment to take vision examination outside assigned hours as ordered by Carrier, and

(b) in consequence of such violation, claimant shall now be paid necessary actual expenses for use of his privately owned automobile from Lyons to East Syracuse, New York and return, a distance of 112 miles at the prevailing rate of 7 cents a mile.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, bearing effective date of July 1, 1948 is in effect hereinafter referred to as the Telegraphers' Agreement. Copies thereof are on file with the National Railroad Adjustment Board.

On February 14, 1949, the Carrier addressed a message to Telegrapher leverman Earl M. Campbell at Lyons, New York that he was due to report for vision examination and must take this examination at once, advising the Carrier the date taken. Mr. Campbell was required to arrange to take this vision examination on his own time, outside his regularly assigned hours of employment. His regular assigned working hours at the time were from 3:00 p.m. to 11:00 p.m. daily except Friday which was his rest day.

Mr. Campbell traveled from Lyons to East Syracuse and return to take this examination on February 21, 1949. East Syracuse is located 56 highway miles one way from Lyons which is the town where the claimant works and resides. He used his privately owned automobile in order to be sure of getting to and from the place of examination in time to report for work. The claim was made to the Carrier for payment of the necessary actual expenses for the use of the automobile for 112 miles round trip at the prevailing rate of 7 cents a mile. The Carrier denied the claim.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, Claimant Earl M. Campbell is employed as a Telegrapher-leverman at

The claim of Agent Phillips was disposed of under the provisions of Section 1 (b) and (c) of the proposed Memorandum of Understanding.

The General Chairman failed to cooperate in negotiating an understanding as discussed at conference on March 7 to cover cases of this kind, but thereafter took the position as set forth in his letter of March 21 (above quoted) that:

"It is our contention that a Memorandum of Understanding is wholly unnecessary as the rules and provisions of the Telegraphers' Agreement clearly cover such matters."

The only rule in the current Telegraphers' Agreement that clearly covers such matters is Article 3 and, as Carrier has shown in its Principal Point 2, that rule does not apply to employees who are required to travel away from their home stations to take examinations or attend classes on operating rules. Article 3 applies only to relief employees; extra employees; and those employees, other than relief and extra employees, who are authorized to use their private automobiles on company business.

Carrier holds that there is no rule or provision in the Telegraphers' Agreement covering cases of this kind and the proposed Memorandum of Understanding provides a just and reasonable method of handling such cases.

CONCLUSION

The evidence herein presented conclusively shows that:

1. Current Telegraphers' Agreement contains no provisions for granting remuneration to an employee required to travel from his home station to another station for the purpose of attending examinations or classes as set forth in Section 3 of Article 19 when there is no available and reasonable train service that could be used.

2. There was available and reasonable train service that Campbell could have used in traveling from Lyons to Syracuse and return; therefore; he is not entitled to remuneration on the same basis as the agreed upon settlement in the case of Agent Phillips at Millerton where there was no available and reasonable train service.

Claim of the Employees in the instant dispute is entirely devoid of merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant is a Telegrapher-leverman at Lyons, New York, assigned 3:00 P.M. to 11:00 P.M. daily except Friday. He was advised by the Carrier on February 14, 1949, that he was due to report for visual examination. He was required by the rules to take the examination on his own time. On February 21, 1949, claimant drove his automobile to East Syracuse, a distance of 56 miles, to comply with the requirements for a visual examination. He claims reimbursement for 112 miles at seven cents per mile for the use of his automobile.

The record shows that claimant could have traveled to Syracuse by train, leaving Lyons at 8:24 A. M. and arriving at 9:15 A.M. He could have returned on either of two trains leaving Syracuse 12:01 P.M. and 1:20 P.M. and arriving at Lyons at 12:45 P.M. and 2:14 P.M. respectively. Adequate bus service was shown to exist between Syracuse and East Syracuse. Under such circumstances the use of a private automobile is not authorized.

The Organization contends that the failure of the Carrier to specify the train upon which claimant should travel left it open to claimant to use his private automobile at Carrier's expense. The requirement that Carrier specify the train to be used is found in Section 2 of Article 19. This rule deals with

investigations and has nothing to do with examinations. Where adequate train service is available, the use of an automobile is not necessary and the Carrier is not liable under Section 4 of Article 19 for the expense thus incurred unless it is specifically authorized. The sustaining cases cited by the Organization are cases where there was no adequate train service available. They have no application here.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 31st day of July, 1950.