

Award No. 5121
Docket No. TE-4995

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 G. R. Lind while away from place of employment to take physical examination on his own time under orders of the Carrier, and

(b) in consequence of such violation, claimant shall now be paid necessary actual expenses for use of his privately owned automobile from Millerton to Brewster, New York and return, a distance of 90 miles at the prevailing rate of 7-cents a mile, plus \$1.25 for meal a total of \$7.55.

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

On June 22, 1949, the Carrier addressed a message to Telegrapher G. R. Lind, along with several other employees, that he was due to report for physical examination on or before July 15, 1949 and must advise Carrier date examination was taken. Mr. Lind was required to arrange to take this physical examination on his own time while on vacation.

Telegrapher Lind traveled from his place of employment at Millerton, where he also resides, to Brewster, New York to take this examination July 7, 1949. Brewster is located 45 highway miles one way from Millerton. As there was no adequate train service available, he used his privately owned automobile. Claim was made to the Carrier for payment of the necessary actual expenses for use of his automobile, plus a meal. The Carrier denied the claim.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, Claimant G. R. Lind, Telegrapher-clerk at Millerton, New York, on the Harlem Division was ordered by the Carrier to report for physical examination. On June 22, 1949, the Carrier issued an unsigned typewritten letter listing the name of G. R. Lind, along with six other names, which contained the following information:

specified in Article 3 without consideration of the conditions under which mileage is allowed under Article 3. This is a matter for negotiation and agreement and not for the Board to decide.

CONCLUSION

The evidence herein presented conclusively shows that the claim of the Employee is not supported by any rule of the Telegraphers' Agreement, and the claim should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, who held regular assignment as telegrapher-clerk at Millerton, was advised by Carrier that he was due to report to Company Doctor at Brewster for physical examination on or before July 15, 1949. He made appointment with the Doctor for examination July 7, 1949, and drove his own automobile Millerton to Brewster and return. He claims reimbursement for 90 miles at 7 cents per mile for use of his automobile and \$1.25 for noonday meal.

Train service was available and claimant's use of his automobile was not authorized. Under Article 19, Section 4, the Carrier is not liable for payment of mileage for use of claimant's automobile, unless authorized, but is liable for actual expense of the noonday meal July 7, 1949.

The claim for automobile mileage should be denied and claim for \$1.25 for meal should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 claim will be disposed of in accordance with the Opinion.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of November, 1950.