

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad that those employees specifically named and those referred to as "et al" in the Organization's Statement of Facts who were instructed to and who did utilize their off-duty hours attending Book of Rules classes (examinations) and taking physical examinations shall be paid therefor in accordance with the provisions of Article 13, of the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of November 1, 1947, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Carrier instructed F. R. Dedrick et al to attend a Book of Rules review class at Hoboken, New Jersey, May 19, 1948, during their off-duty hours.

Carrier instructed J. H. Morris et al to attend a Book of Rules review class at Dover, New Jersey, on June 8, 1948, during their off-duty hours.

On October 14, 1949 J. W. Brady and J. L. McCleary were instructed by the Carrier to attend a Book of Rules review class in Hoboken on October 19, 1949, during their off-duty hours.

W. H. Tregenza et al were instructed by the Carrier to attend a Book of Rules review class at Dover November 21, 1949, during their off-duty hours.

The Carrier instructed H. S. Pelham et al to attend a Book of Rules review class at Dover on November 22, 1949, during their off-duty hours.

E. D. Feeney was instructed by the Carrier to report for "Book of Rules" at Hoboken October 9, 1951, during his off-duty hours.

O. L. Chadwick et al were instructed by the Carrier to attend Book of Rules class at Waterville April 23, 1952, during their off-duty hours.

The Carrier instructed J. N. Bissell et al to attend a Book of Rules review class at Hoboken May 5, 1953 during their off-duty hours, and similar

advisable for this Board to attempt to do so by reading into the rules something that is not there.* * *” (Award 2508—Third Division)

“In its Award No. 487, the Third Division in denying a similar claim of two section foremen, states the Board’s position as follows:

There is no doubt but that some inconvenience and sacrifice of time was occasioned the claimants by the requirements of the Carrier, and the examination of the Employees to determine their familiarity with the Book of Rules and Regulations of the Operating Department, at the same time such examination was as much to the advantage of the Employees as to the Carrier, inasmuch as it constituted a means of certifying or recertifying the Employees to the requirements of the positions of responsibility they held with the Carrier.”

The two Awards cited immediately above were considered by the First Division in DL&W Award 10809 wherein that Division denied a similar claim without the aid of a referee.

The claim is without merit and should be denied because:

- (1) There is no rule, practice or precedent for such a claim.
- (2) Both the Book of Rules Review Classes and Physical Examinations were in the interest of the Employees and solely for the purpose of keeping them qualified for their positions, thus primarily serving themselves.
- (3) The Employees’ statement of claim as presented to the Board has never been presented to the Carrier in its present form nor discussed or handled in accordance with the provisions of the Railway Labor Act.

Oral hearing is desired.

All data in support of the Carrier’s position have been handled with the Employees on the property.

OPINION OF BOARD: The question at issue is whether Article 13 of the parties’ Agreement requires the Carrier to pay employees who submit, by direction of the Carrier, to physical and rules examinations outside of their assigned hours or on days not working, for time so consumed.

Much of the argument and theory advanced in the docket is a rehash of what the Board has dealt with many times in the past concerning similar rules, but to little advantage so far as putting at rest troublesome questions.

We are more fortunate than usual in now having before us a record which gives a clear insight into the background of the dispute and attempt by the parties to reach an understanding on the rule and how it should be applied.

We learn that in negotiations, after some strife and discord, agreement was finally reached for amending the rule which had been in effect, by placing the words “including examinations” in the second sentence of Article 13(a), causing it now to read:

“(a) Regularly assigned employees required to attend Court, inquests, or act as witnesses in connection with their employment with the Company, or perform other Company business, will be furnished transportation plus legitimate expenses, and be paid for actual time lost from their positions, and on the pro rata basis with a minimum of three hours for time devoted outside of assigned hours or on days not working. All witness fees to accrue to the Company. Such service, including examinations, performed

on rest days will be paid for at time and one-half rate. In all cases, actual necessary expenses incurred while away from home will be allowed." (Underscoring supplied.)

The Carrier is now before this Board contending that the rule as amended gave the employees nothing more than would have been received by them had the Employee Representative accepted language proposed by the Carrier in earlier bargaining sessions, reading:

"Employees coming within the scope of this Agreement will be required to take such physical examinations as in the judgment of the Management may be necessary. Such employees will also be required to attend Rules examinations and meetings of instruction as may be designated by the Management.

Time consumed in connection with physical examination or rules examinations, or instructions, will be at the expense of the employee."

The Employees are contending that the rule as changed by inserting the underscored words, as shown above, gave them everything for which they were contending and to which they now would be entitled had the Carrier accepted a counter-proposal, reading:

"Employees required to take examinations by direction of an Officer of the Company shall be paid for time lost and/or consumed at the rate of the position occupied; in case of an extra employee, the minimum rate of the seniority district will apply. In all cases actual necessary expenses incurred while away from home will be allowed."

As we have heretofore said, there is much more that is contended for and argued in the docket, but the words of the rule cause no real trouble when used in the actual setting as to how the parties legislate on rules and rule changes. Accordingly, we shall confine our efforts to an attempt at interpreting and applying the language of the rule as we understand it and without resort to extraneous matters.

First, the Organization's position that it inserted two words as a substitute for a whole paragraph and got the same meaning is not to be lightly regarded. Such things have been accomplished in the collective bargaining process and it is less startling in connection with legislating labor agreements on railroads, where every single word in the agreement is pregnant with meaning according to where placed and how used.

But we have a feeling that, in the two key words in question, we have a brain child conceived in compromise and nurtured by the belief and in the hope that all not yet settled between the parties can still be gained by interpretation. We shall not be so used if we can help it.

As we see it, the Carrier wanted an agreement in clear and unequivocal words that would require its employees to submit to physical and rules examinations at the "expense of the employees". The employees, as here, wanted to be paid for time lost or consumed in taking examinations as directed. The parties could have resolved their own dispute by one party accepting the language proposed by the other and the fact they didn't is conclusive evidence that neither got all it was demanding or for which it was contending. Hence the compromise where each salvaged something and a bargain was struck by which the Carrier must pay for required physical and rules examinations at the punitive rate on the employee's rest day, but time to be paid for only on rest days.

If the foregoing is not what the parties intended, they failed miserably in their attempt to write a rule and the Board will not do the job for them.

To give effect to our interpretation of the rule, those claims of record on behalf of employes who reported for physical or rules examinations scheduled on their rest days should be paid at the punitive rate. By claims of record, we mean those actually on file and others based on violations occurring after the instant dispute was docketed on the property, providing names and dates can be ascertained from the Carrier's records. Other claims are not good.

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 Employes 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 the Carrier violated the Agreement in the manner and to the extent limited by the Opinion.

AWARD

Claims sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1955.