

Award No. 11700
Docket No. TE-10533

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers against J. Turner Butler and William A. Hallows, Trustees, Florida East Coast Railway, that:

1. Carrier violated the agreement when it failed and refused to compensate Agent-Telegrapher, H. A. Owen, East Palatka, Florida, in accordance with agreement rules for April 8, 1957.

2. Carrier shall now be required to compensate H. A. Owen in the sum of \$30.01.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and on behalf of Florida East Coast Railway Company and adopted by successive trustees, hereinafter called the Carrier, or management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement is on file with this Division and is by reference made a part of this dispute as though set out herein word for word.

The dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

1. H. A. Owen is the regularly assigned agent-operator at East Palatka, Florida. His regular assigned hours of service are 8:00 A. M. to 5:00 P. M. with one hour for lunch.

2. The pro rata rate of pay as of April 8, 1957 was \$2.098 per hour.

3. A part of the duties of the assignment of the claimant is acting as claims agent for United States Railroad Retirement Board. The duties of the claimant with regard to handling claims for unemployment insurance benefits are set forth as follows:

6. Since no rule of the Telegraphers' Agreement lends even the most remote support to the instant claim, to sustain it the Board would have to read into the Agreement a condition it does not contain. This the Board has consistently refused to do, Awards of the Third Division repeatedly holding that it is without authority to revise, change, modify, rewrite or expand agreements. Representative of these Awards is Third Division Award 6828, reading in part:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose."

See also Awards 6912, 7718, 7870 and 7944, among others.

For the reasons explained, the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by The Order of Railroad Telegraphers in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Organization in this case, which it has not seen. All of the matters cited and relied upon by the Railway have been discussed with the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The record presents these pertinent facts: Claimant, in addition to his duties as telegrapher for Carrier, processes claims for the Railroad Retirement Board. The United States Government subpoenaed him as a witness in a criminal proceeding involving one of these claims. He requested, but Carrier denied him, compensation for loss of pay and expenses occasioned by his trip to court.

The question for decision is whether the claim is supported by Rule 13 of the Agreement which reads:

"Attending Court, Investigations, etc.

"For attending court, inquests, investigations or hearings as a witness for the Railway, an assigned employe will be paid the full wages of his assignment and any net loss in express compensation during the period so used. If required to attend on his assigned rest day in the town where his position is located he will be paid actual time on the minute basis at time and one-half rate, with a minimum of three (3) hours, and if attending in a town other than the location of his assignment will be paid eight (8) hours at time and one-half rate. An unassigned extra employe required to attend such proceedings in the town in which he resides will be paid actual time on the minute basis, at the minimum pro-rata rate, with a minimum of three (3) hours if other compensated service is not performed on the same date, but if required to attend in another town will be paid eight (8) hours at the minimum rate for each day so used. The Railway will furnish employes transportation and reimburse them for actual necessary ex-

penses while away from home or assignment location. Fees and mileage accruing will be assigned to the Railway. This rule will not apply to an employee instructed by the Railway to attend a hearing of charges against him, and who is not exonerated of such charges."

Claimant's position is based upon the contention that he appeared in court in connection with his duties as an employee for Carrier. He maintains that the Contract of Employment, as well as the Agreement, establishes not only a stated but an implied responsibility on the part of employer to reimburse employee for duties in his behalf. Carrier asserts that Claimant was a witness for the United States Government, that it was not party to the suit, and that it had no reason to request employee's appearance in court.

We think the language of Rule 13 permits only one interpretation. It clearly states that employees will receive wages for attending court, inquests, investigations and hearings as a witness for the Railway. We cannot ignore the restrictive phrase "witness for the Railway." The Claimant in this case did not serve as a witness for Carrier but for the Government of the United States. The record does not show that the Carrier initiated any action which resulted in employee performing the duties as a witness. Where the language is not ambiguous, the Agreement cannot be open to implication or interpretation. If we accept the interpretation of Rule 13 that Claimant sets forth, we are virtually changing the language to include situations where employee serves as a witness not only for the Railway but for other agencies as, in this instance, the Government of the United States. Until the parties see fit to restate their Agreement, the Board is bound to recognize only the explicit and unambiguous words of the Agreement.

We, therefore, hold that the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of August 1963.

**LABOR MEMBER'S DISSENT TO AWARD 11700,
DOCKET TE-10533**

This award is either grossly erroneous or introduces a new concept in relations between Carriers and their employes.

The majority, consisting of the Carrier Members and the Referee, says that a pertinent fact of this case is that the claimant ". . . in addition to his duties as telegrapher for Carrier, processes claims for the Railroad Retirement Board."

My impression, and that of the Employes, was that the duty of processing the claims was imposed upon the claimant by the Carrier and thus was a duty, among others, within the scope of his employment by the railroad. In this view the award is clearly erroneous because it would convey to the Carrier the right to require involuntary servitude — without pay — of its employes. This is not only contrary to the agreement, but contrary to the whole concept of the American way of life, not to mention the Constitution of the United States.

The only alternative to such a state of affairs must be that the majority intended to hold that the processing of claims "for the Railroad Retirement Board" is an activity entirely outside an employe's duty to obey directives of the Carrier, and one which may or may not be continued at the option of the employe.

At any rate this award places an extremely important matter within the realm of speculation and conjecture. For this reason, I express firm dissent.

**J. W. Whitehouse
Labor Member**