

Award No. 13081
Docket No. TE-11996

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
HUDSON & MANHATTAN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Hudson and Manhattan Railroad that:

1. Carrier violated the agreement between the parties when it failed and refused to pay Towerman H. Kramer for time consumed on March 31, 1959 in connection with required medical examination.
2. Carrier shall be required to compensate H. Kramer in the amount of three hours' pay at the rate of his position.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

H. Kramer, holding a regular assignment to a position of towerman with assigned hours of 11:00 P.M. to 7:00 A.M. was directed by an officer of the Carrier to report to the Medical Examiner for the regular two-year physical examination. He complied by reporting at the doctor's office at 2:00 P.M. on March 31, 1959. After waiting for about twenty minutes, he was informed that the doctor would not be in the office on that day.

He submitted a time slip on the regular form for three hours' pay, which was declined by the Superintendent of Transportation as follows:

Supt. of Transportation E. A. Duszak to Towerman H. Kramer, April 17, 1959:

"Reference is made to your time claim dated March 31, 1959 received April 8, 1959 for 3 hours' pay due to absence of Company Medical Examiner after reporting for two year periodic physical examination.

There is no payment involved in the circumstance that the doctor is prevented from keeping his office hours, and employee is required to report on another day.

Therefore, your time claim is denied."

duty shall be paid a call (three hours for two hours' work, or less) and time and one-half thereafter on the minute basis for the time required to work in advance of his regular starting time.

ARTICLE VIII

(a) Employees required to attend court, inquests, investigations or hearings, or take rules, medical or similar examinations, by direction of an officer of the Carrier, shall be paid for time lost from regular assignments. Time consumed outside of regular assignments shall be paid for pursuant to Article VI and/or VII. The Train Clerk rate listed in wage scale will apply to unassigned employees. Necessary expenses while away from place of employment will be allowed. Any fees or mileage will accrue to the Carrier."

In accordance with these provisions, the claimant received three hours' pay for the medical examination which he underwent on August 7, 1959. The Carrier complied fully with the quoted provisions. Claimant was "required" to take a periodic medical examination, and upon taking the examination he received three hours' pay.

The only notice which the claimant received relating to the present dispute indicated that he was due for his regular examination, and should consequently arrange to be examined by the Medical Examiner. The claimant was not required to appear for the examination on any particular date. If the claimant had checked with the Carrier, prior to appearing on March 31, 1959, he would have been told that the Medical Examiner was not in his office. There is no reason whatsoever why the Carrier should be penalized by reason of his failure to so check.

Under the claimant's theory, an employee reporting to the office of the Medical Examiner several times, on a day when the Examiner is not present (the Carrier's Medical Examiner not being a full time employee), would be entitled to three hours' pay for each appearance. Certainly this result is not dictated by the cited provisions of the agreement between the parties. The claimant was "required" to take a medical examination; he took it; he was paid for it. There is no reason why he should be paid twice.

The claimant was not ordered to report for a medical examination on a particular date. Thus, the Board does not have before it the question of a claimant who had been ordered to report on March 31, 1959, and had so reported, only to find the Medical Examiner absent. Here is the simple case of a claimant who was not ordered to report on March 31, 1959, but by chance chose to come in that day when the Examiner was absent. The Carrier is small and its work force is small. No terminal is more than 20 minutes from the office (in fact, in this case, the claimant worked at Hudson Terminal and the office is on the first floor of the building over the Terminal). If employees should be allowed three hours' pay whenever the Examiner is absent, the word of his absence could be quickly spread and encourage some to visit the office and file a claim.

CONCLUSION

In view of the above, it is submitted that there is no basis for the claim and that it should be dismissed.

OPINION OF BOARD: The claim here is for three hours' *pro rata* pay for failure to pay Claimant for time spent on March 31, 1959 in connection with a required medical examination.

Due to what appear to be unusual circumstances, Carrier did not give reasons on the property why it denied the claim. It is, therefore, left with no defense against the claim and it should be sustained, but without prejudice on the merits.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1964.