

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that regular third trick operator at EYE, Corry, Pennsylvania, Tower, J. W. Zerres, be allowed eight hours' pro rata for day lost February 26, 1962, account he was unable to cover his regular assignment without proper rest due to the fact that he was required to report for regular periodic physical examination at Erie, Pennsylvania at 1:45 P. M. on February 26, 1962.

Operator J. W. Zerres is the regular third trick operator at EYE, Corry, Pennsylvania, and it would be impossible for him to postpone his examination so that he could take it at a time other than his relief days when he would have at least eight hours' sleep before reporting for night duty again.

EMPLOYEES' STATEMENT OF FACTS: At Corry, Pennsylvania, Carrier maintains 24-hour service in an office known as "EYE" Tower, manned by three shifts of block operators. The positions are covered by agreement between the parties, the regulations in said Agreement having become effective September 1, 1949 and the rates of pay effective February 1, 1951. Copy of said Agreement is on file with your Board and is, by reference, made a part of this submission.

Claimant was, on the date of the claim, assigned to the third shift position at "EYE" Tower with assigned working hours beginning at 11:00 P. M. and ending at 7:00 A. M., daily except Wednesdays and Thursdays. He worked that position on Sunday, February 25, 1962, going to work at 11:00 P. M. and going off duty at 7:00 A. M. the following morning, February 26, 1962. He was scheduled to return to work at 11:00 P. M., Monday, February 26, 1962.

However, on February 26, 1962, he had arranged a fixed appointment with Carrier's medical examiner, located in Erie, Pennsylvania, for 1:45 P. M. The medical examiner was the nearest to Claimant's home and work. The distance between Corry and Erie, Pennsylvania, is 38 miles. Rail transportation was available for Claimant to make the trip to Erie and return

The Superintendent, Personnel, denied the claim by letter of April 12, 1962, pointing out, in part, that:

"It has been the practice with respect to medical examination for the employe to arrange for his periodical examination subsequent to having been notified by Management the date such examination is due, and it is his responsibility that he be examined on or before the due date. In the instant case, the Claimant elected to report for his periodical examination in the manner in which he did. In view of the past practice and on the basis that the employe was responsible for the date he selected to be examined, it cannot be agreed there was any violation of the schedule agreement."

Subsequently, at the request of the District Chairman, a Joint Submission covering this matter was prepared, a copy of which is attached as Exhibit A.

At a meeting on July 12, 1963, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager, Labor Relations, denied the claim by letter of September 4, 1963, pointing out, in part, that:

"The date, time and mode of travel in connection with regular periodic physical examinations are left to the sole discretion of individual employes. In the instant case, it was the Claimant's decision to choose a mode of travel which consumed more than 10 hours of his rest time in order to submit to a physical examination of less than one hour's duration. His normal mode of travel from home to work location and return is by automobile, and it is not unreasonable to expect him to utilize the same mode of travel in connection with his physical examination. Neither is it shown in the Facts that Claimant made any attempt during the period from February 7 to February 28, 1962, to arrange his appointment with the Company Doctor to a more appropriate time during the day rather than close to the middle of his rest period. Under the circumstances, it is clear claimant could have arranged to take his periodic physical examination without deprivation of normal rest or loss of time from his position."

Therefore, so far as Carrier is able to anticipate the basis of this claim, the sole question to be decided by your Honorable Board is whether, under any provision of the Rules Agreement or interpretations thereto, Claimant J. W. Zerres is entitled to 8 pro rata hours for February 26, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, living and working in Corry, Pennsylvania, was an operator on the third shift; his regular hours each day, except Wednesdays and Thursdays, which were his rest days, were 11:00 P.M. to 7:00 A.M. On February 7, 1962, he was notified by Carrier to arrange for and submit to a physical examination by February 28. He arranged an appointment for 1:45 P.M., February 26, with the nearest Medical Examiner, who was in Erie, about 38 miles from Corry. He completed his tour of duty at 7:00 A.M. on February 26; he left Corry via train at

8:28 A. M., arrived at Erie at 9:23 A. M., waited to see the Medical Examiner at 1:45 P. M.; the examination took about an hour; he waited for the 6:25 P. M. train from Erie, and arrived at Corry at 7:29 P. M. He then called in and requested to be relieved for his next shift because he felt he would not have adequate rest to do his job properly; his request was granted. Claim is made that he be paid for the shift he missed with permission on February 27.

The record does not include proof to demonstrate that Carrier imposed on the Claimant an unavoidable need to lose time from his job in order that he might obey the instruction to be examined. Without such proof the Claim cannot stand. It was the Organization's burden to supply such proof to support its claim.

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 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 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 25th day of January 1968.