



Award Number 17770

Docket Number TE-17871

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven and Hartford Railroad, that:

Carrier violated the Agreement between the parties when it failed to compensate Signal Station Operator J. L. Ahlijian after ordering him to report to Rules Examiner at Providence for rules review. Claim is hereby made for 3 hour call and travel time of 2 hours Worcester to Providence, round-trip at pro rata rate of S. S. Operator, Jackson Street, Worcester.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties dated September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

These claims were timely presented, progressed to the highest officer designated by the Carrier to receive appeals, including conference, in accordance with the terms of the Agreement and have been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim arose out of Carrier requiring Claimant to report to the Rules Examiner for re-examination on the Operating Rules and refusing to pay him for the time consumed in accordance with the Agreement.

(b) ISSUE

May Carrier require an employee to be re-examined on the rules without compensating him for the time consumed?

(c) FACTS

Claimant J. L. Ahlijian was the senior applicant for Vacancy No. 1, Advertising Notice No. 1 dated January 3, 1967, third trick Signal Station Operator, Jackson Street, Worcester, Massachusetts. The assignment was awarded to Claimant on January 10, 1967. Shortly thereafter Claimant began to post on the position as required under Carrier's instructions. On January 22, 1967 while posting at Jackson Street, Claimant was instructed to protect the third trick position in another Signal Station, Hope Avenue,

(f) AUTHORITIES RELIED ON

Awards of the Third Division, National Railroad Adjustment Board:

2282	7577
4747	11965
7333	

CARRIER'S STATEMENT OF FACTS: The claimant in this dispute, Mr. J. L. Ahlijian has been in the employ of this Company since November 9, 1966. He was a regularly assigned operator at Jackson Street Tower, Worcester, Massachusetts with a work week of Thursday through Monday. On Sunday, January 22, 1967, a vacancy opened up on the third trick at Hope Avenue, Worcester. As the claimant was qualified at this point, he was diverted to this assignment. During the claimant's tour of duty, he was required to copy a train order effecting the movement of Train M-7. Mr. Ahlijian was so hesitant and slow in copying this train order that the operator at Jackson Street was instructed to proceed to Hope Avenue to see if he could be of some assistance to the claimant. However, before this man reached Hope Avenue, Mr. Ahlijian had completed the train order to the Train Dispatcher's satisfaction. The delay to Train M-7 resulting from the claimant's hesitancy in completing the train order was serious enough to warrant him to appear before the Rules Examiner for a review of the New Haven Operating Book of Rules. This review or re-examination was held on Wednesday, January 25, 1967, at Providence, Rhode Island.

Claim was initiated on behalf of Mr. Ahlijian for a three hour call and two hours travel time Worcester to Providence and return at the pro rata rate of the Operator's position at Jackson Street. Claim was progressed through the prescribed channels on the property up to and including the undersigned.

Mr. Ahlijian's claim was denied on the property on the basis that Article 17 does not require payment of a call for time consumed during a review of the rules nor does it provide for any compensation whatsoever when an employee is required to be re-examined by a Rules Examiner.

Attached in exhibit form is copy of pertinent correspondence as follows:

"A"—General Chairman's appeal

"B"—Carrier's decision

Copy of Agreement between the parties, dated September 1, 1949, as amended, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant was required to report to Carrier's Rules Examiner for a review of operating rules, necessitating his traveling from Worcester to Providence and return. He claimed compensation for a total of five hours under Article 17 of the Agreement. This rule provides compensation for time lost or consumed in attending certain named events, including rules examinations, as well as for expenses incurred.

Carrier declined the claim primarily on a "mutuality of interest" theory, because the requirement grew out of an incident indicating possible need for a review of, or re-examination on, certain of the operating rules.

We are of the opinion that the specific language of Article 17 precludes favorable consideration of the Carrier's theory.

The record supports a finding that five hours were consumed, and the claim will be sustained on that basis alone. It should be observed, however, that the rule does not provide for either call payments or travel time as such, but only for "time lost or consumed", and reimbursement for actual necessary expenses.

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.

A W A R D

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
by Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1970.