

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Chicago and North Western Railway (M&StL), that:

1. Carrier violated the Agreement of September 1, 1955 when it declines to pay deadhead time to members of this craft who were required to leave their headquarters points for re-examination of the Carrier's Operating Rules.

2. Carrier shall now pay the following telegraphers in the amounts listed at the rate of their positions for traveling to and from points other than their headquarters for these re-examinations, on the consolidated book of operating rules issue of June 1, 1967.

N. E. Berg, Hopkins, Minnesota, from Hopkins, Minnesota to St. Paul, Minnesota and return, three hours deadhead time, April 24, 1968.

F. H. Bjornson, same situation, April 24, 1968.

H. A. Mix, same situation, April 27, 1968.

L. N. Wigfield, Hopkins, Minnesota, from Hopkins, Minnesota to New Prague, Minnesota and return, three hours' head-head time, May 13, 1968.

R. L. Rosenblatt, Roland, Iowa, from Roland, Iowa to Marshalltown, Iowa and return, three hours' deadhead time, May 11, 1968.

G. R. Krause, Clemons Grove, Iowa from Clemons Grove, Iowa to Marshalltown, Iowa and return, three hours dead-head time, May 11, 1968.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated upon various provisions of the September 1, 1955 Agreement as amended and supplemented and by this

paid last year for these same employees, under the same rules and on the same subject.

May we discuss this while I am in Chicago on June 28, 1968 and reach the correct understanding on the matter.

Yours truly,

/s/ M. C. Ruid
M. C. Ruid,
General Chairman"

"TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

July 1, 1968

File 82.1

Mr. A. E. Myles
Director of Labor Relations
M&StL (M&StL Divn.-CNW) Ry. Co.
400 West Madison Street
Chicago, Illinois 60606

Dear Sir:

Claims are appeal from the decisions of Superintendent Perrin, Mason City, Iowa as follows:

STATEMENT OF CLAIM: Claim of General Committee of Transportation-Communication Employees Union on the Minneapolis & St. Louis Railway (M&StL Divn.-CNW) Ry. Co. that:

1. Carrier violated the Agreement of September 1, 1955 when it declines to pay deadhead time to members of this craft who were required to leave their headquarters points for re-examination on the Carrier's operating rules.

2. Carrier shall now pay the following telegraphers in the amounts listed at the rate of their positions for traveling to and from points other than their headquarters for these re-examinations, on the consolidated book of operating rules, issue of June 1, 1967.

N. E. Berg, Hopkins, Minn. from Hopkins, Minn. to St. Paul, Minn. and return, three hours deadhead time. April 24, 1968.

F. H. Bjornson, Hopkins, Minn. from Hopkins, Minn. to St. Paul, Minn. and return, three hours deadhead time. April 24, 1968.

H. A. Nix, Hopkins, Minn. from Hopkins, Minn. to St. Paul, Minn. and return, three hours deadhead time. April 27, 1968.

L. N. Wigfield, Hopkins, Minn. from Hopkins, Minn. to New Prague, Minn. and return, three hours deadhead time. May 13, 1968.

R. L. Rosenblatt, Roland, Iowa from Roland, Iowa to Marshalltown, Iowa and return, three hours deadhead time. May 11, 1968.

G. R. Krause, Clemons Grove, Iowa from Clemons Grove, Iowa to Marshalltown, Iowa and return, three hours deadhead time. May 11, 1968.

STATEMENT OF FACTS: The above telegraphers were instructed and required by the Carrier to attend rules classes on the current book of Carrier's operating rules at the points outlined above and complied with these instructions and traveled to and returned to these points by using their own autos for this purpose. Upon submitting claim on Form 490, all received their claims back with the deadhead portion declined on the basis that the claims were not supported by Agreement and that the Carrier's position was that the Agreement did not provide for deadhead time to be paid in these circumstances.

POSITION OF EMPLOYEES: It is our position that employees under the Agreement are entitled to reimbursement for deadhead time when required to leave their headquarters points for attending court, investigations and rules examinations as provided by Rule 28 and 19 of the Agreement of September 1, 1955.

These employees filed for this payment and same has been declined and hence this appeal. We have previously been paid for travel time or deadhead time under the provisions of this rule, by the same Carrier officers who have now decided to decline these claims. We have record of other claims under the same circumstances being paid, and we have never before had to appeal any claims of this type to your office. These employees were required to travel considerable distance at the Carrier's request for these examinations and as that was the purpose the rule was negotiated into the Agreement, we believe we are entitled to this payment.

The rule is plain, and when looked at from all four corners in conjunction with Rule 19, the employees' claims should be sustained as filed. As late as the previous 12 month period to the date of these claims we have identical claims which have been paid when filed without formal handling. A few of which I will list for your information: F. B. Littfin, A. H. Mattson, L. M. Price, R. L. Neubauer, and others.

Will you kindly allow the claims as presented. By copy of this letter to Mr. Perrin, we must advise him his declinations are not acceptable and same are appealed to Mr. Myles for the reasons herein stated.

Yours truly,

/s/ M. C. Ruid
M. C. Ruid,
General Chairman

to support the case. Will you now allow the claims as presented.
Please advise.

Yours truly,

/s/ M. C. Ruid
M. C. Ruid,
General Chairman"

(f) AUTHORITIES RELIED ON

Third Division Awards 3966 (Fox), 10808 (Moore), 11048 (Dolnick), 12422 (West), 13724 (Engelstein), 13865 (Williams), 14124 (Hamilton), 15663 (Kenan), 16173 (Heskett), 16778 (Cartwright), 13799 (Williams).

CARRIER'S STATEMENT OF FACTS: On the dates involved, the claimants were required to take a re-examination on the operating rules.

Claimants Berg, Bjornson, Mix and Wigfield were regularly assigned telegraphers at Hopkins, Minnesota. Claimant Rosenblatt was the agent at Roland. Claimant Krause was the agent at Clemons Grove, Iowa. The claimants attended the re-examination on their rest days. In addition to the payment for actual time consumed in attending the classes, claim is submitted for three hours deadhead time on each date.

The claims have been denied.

OPINION OF BOARD: The six Claimants were directed to attend classes for re-examination of rules. Petitioner alleges that Carrier's failure and refusal to compensate each of them for travel or deadhead time violated Rule 28(f). Carrier's defense is that Claimants were properly compensated as specifically provided for in Rule 28(g). The Rule in its entirety, with emphasis supplied, reads:

"RULE 28.

WITNESSES - EXAMINATIONS

(a) Employees taken away from their regular assigned duties on instructions of the Carrier to attend court, inquest or to appear as witnesses for the Carrier at any investigation, shall be furnished free transportation and shall be paid for time lost and/or consumed at the rate of the position occupied, with a minimum of eight (8) hours for each calendar day. The compensation received shall not be less than the employee would have earned had such interruption not taken place.

(b) An employee who works his assignment or any portion thereof and is required by the Carrier to devote his time to such service outside his regular assigned hours, shall be paid under the Call and Overtime rules of this Agreement in addition to payment for his assignment.

(c) Extra employees not working on an assignment shall be allowed a minimum of eight (8) hours at the rate of the position last worked for each calendar day on which he is required to devote his time to such service.

(d) Employees on vacation, leave of absence, or on rest days, shall be allowed a minimum of eight (8) hours' pay at the rate of time and one-half, based upon the rate of the position last worked for each calendar day devoted to such service.

(e) Employees shall be reimbursed for any necessary actual expense incurred when used under this rule. Any fee or mileage accruing will be assigned to the Carrier.

(f) An employee required to leave his headquarters shall be compensated for travel time in accordance with Rule 19.

(g) Employees required to report for re-examination on operating or transportation rules will be paid for time lost, and if required to leave home will be paid necessary actual expenses. If such re-examinations are required on employee's rest days, payment will be made on the basis of actual time consumed, exclusive of travel time." (Emphasis ours.)

Rule 28(a) through (f) prescribes compensation and emoluments contractually vested in employees for service devoted "to attend court, inquest or to appear as witnesses for the Carrier at any investigation." The claim before us is not related to any of those specified services.

Rule 28(g) is specifically applicable to compensation and emoluments relative to "Employees required to report for re-examination on operating or transportation rules" which is admittedly descriptive of the status of each of the Claimants during the times material herein.

Because of the established principle of contract construction that a specific provision of an agreement peculiar to a particularized circumstance prevails, we find that we must deny the claim. To hold otherwise would be an absurdity in that it would be a declaration that Rule 28(g) is meaningless and without force or effect.

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 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 October 1970.

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