

NATIONAL. RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20632
Docket Number X-20530

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Erie **Lackawanna** Railway Company

STATEMENT OF CLAP!: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

(a) Carrier violated Rules 17, 25, 66 and past practice of the Signalmen's Agreement **dated March 1, 1953, when** it refused Signal Maintainer R. E. **LaFollette** compensation for taking physical **examination** at the Carrier's request on his own time on July 26, 1972.

(b) Carrier should compensate Mr. R. E. **LaFollette** for two hours and forty minutes at the time and one-half rate of pay.

(Carrier's File: **212-Sig.**)

OPINION OF BOARD: Claimant was a Signal Maintainer with regular hours of 11:00 P.M. to 7:00 A.M. He was advised to schedule his **annual** physical n-examination. He arranged to take the physical **examination** on **Wednesday, July 26, 1972** during the afternoon. Subsequently Claimant filed a **claim** for a call (**two** hours and forty minutes) stating that he was unable to take his physical during his regular tour of duty.

Petitioner relies on the following rules in support of the **Claim:**

"**RULE 17. Employees** released from duty and notified **or** called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of **two (2) hours and forty (40) minutes** at the overtime rate; if held longer than two (2) hours and forty (40) minutes **they** will be paid at the overtime rate computed **on** the actual minute basis. The **time of employees** so notified will begin at the time required to report and end when released. The time of **employees** so called will start when they report and end at the time they return to designated point at home station."

"**RULE 25. ATTENDING COURT, ETC. - Employees** attending court, inquests, investigations or hearings as witnesses or **performing** other special service for the company will be paid **compensation** equal to what they would have earned on their regular

"assignment, except that employes assigned rest days, if used on that particular day or days will be allowed eight (8) hours pay at time and one-half rate for each day so used. **Employes** called for such service outside of regular assigned hours will be compensated in accordance with Rule 17. Actual expenses will be allowed while away from home station or headquarters. Any fees or mileage for such service will be assigned to the railroad company. "

"RULE 66. Such examinations or x-examinations on rules and/or regulations as employes may be required to take will, if possible, be conducted during regular working hours without deduction in pay therefor. Where conditions do not permit the taking of such examinations during regular working hours, employes will be paid while so engaged as if working."

It is argued that **Rule 66** is applicable since Claimant was required to take the physical examination outside regular working hours. Further, Petitioner contends that taking a physical examination is the type of special service contemplated by **Rule 25**. It is also argued that it has been the past practice to pay employes under similar circumstances. Awards 17929 and 19989 are cited in support of the Organization's position. It is argued that Claimant was following a company order and should have been compensated for the time involved; furthermore there is nothing in the rules cited (17, 25 and 66) to indicate that the parties had agreed to exclude local physical examinations.

Carrier argues that the physical re-examination is a condition of employment and does not constitute work. Under the specific terms of the Agreement, the only time an employee is entitled to compensation is when he is required to report to the Carrier's Chief Surgeon at Cleveland for a re-examination. The pertinent language of the Understanding on Physical Re-examination provides as follows:

"UNDERSTANDING ON PHYSICAL REEXAMINATIONS

Erie Railroad requires certain physical **reexaminations**. Effective September 1, 1948, when an **employee** is directed by the company to report to the Chief Surgeon at Cleveland, Ohio, for **reexamination**, he will be reimbursed by the railroad company for any reasonable traveling expenses incurred in the trip. When an **employee** loses pay in traveling to or from the Chief Surgeon's Office at Cleveland, Ohio, he will be allowed compensation, exclusive of **overtime** (not a part of regular **assignment**) or other arbitrary **payments**, for each day on which pay is lost.

"These payments for traveling expenses and wage loss incurred will not be made when reexamination in the Chief Surgeon's office is at the request of the **employee** or his representative or results in disqualification."

Carrier states that in the instant case, **Claimant** suffered no wage loss and any payment to him for the time spent is contrary to the explicit language quoted supra with respect to re-examinations. Carrier also denies the contention with regard to past practice.

The issue involved herein is not new. In a similar situation, the Board in Award 2828 stated:

"...to recover overtime pay for off duty time spent in taking a physical examination we believe the true rule is that such right must be found from express language appearing within the four corners of the contract itself, or from language appearing therein from which an inference to that effect is reasonable to be drawn, or it does not exist."

The same denial position was maintained by the Board in a series of following cases including Awards 3302, 13852, 16576 and Fourth Division Award 1370. Awards 17929 and 19989 cited by Petitioner are not pertinent in that in both of those cases Claimants lost pay as a result of taking a physical examination during working hours.

In the case before us we find no rule support whatever for Petitioner's position, particularly in view of our consistent position that there was not "work" involved in the taking of the physical examination. We do not accept the argument that since the rules do not exclude local physical examinations they are covered by the specific rules cited by the Organization; this argument is deficient in interpretative logic. Further, there is no evidence to support the contention of past practice. In view then, of the lack of rule support for Petitioner's position, and in the light of the well defined position of the Board in prior similar disputes, the Claim must be denied.

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;

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That this Division of the Adjustment Board has jurisdiction
over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1975.