

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
LOS ANGELES AND SALT LAKE RAILROAD COMPANY**

DISPUTE.—"Shall R. E. Deffebach, C. O. Maxwell, S. J. Angell, P. E. Kennedy, Harry Lunceford, R. D. Gilmore, A. C. Gale, W. J. Keate, and J. G. Bauerlein be paid at rate of time and one-half for taking rules reexamination at Management's request, on Sunday, May 13, 1934?"

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock Paul Samuell was called in as a Referee to sit with the Division.

This is an ex parte submission and the record discloses the following facts:

Signal Maintainers Deffebach, Maxwell, and Angell, located at Lund, Utah, Carp, Nevada, and Islen, Nevada, respectively, were notified by their Assistant Signal Supervisor to be in Caliente, Nevada, Sunday, May 13, 1934, for reexamination on rules.

Signal Gang Number One, temporarily located at Caliente, composed of P. E. Kennedy, Harry Lunceford, R. D. Gilmore, A. C. Gale, W. J. Keate, and J. G. Bauerlein, were notified verbally on May 12, 1934, by their Foreman to report at Caliente station on arrival of train number 21, Sunday, May 13, 1934, at 9:45 A. M. for reexamination on rules. They were released at 11:45 A. M. Keate, who had two or three weeks previously passed the rules examination, was required to report with the other employees.

All employees involved were regularly assigned to work six days per week. Sunday, May 13, was their regular scheduled day off duty. Deffebach was required to ride train number 21, Lund to Caliente, returning on train number 22, a total elapsed time of eight hours. Maxwell rode his motor car to Caliente and return, consuming four hours for the trip. Signal Gang Number One was temporarily located at Caliente and gang members involved were not required to travel away from home station, but were actually held two hours for reexamination on rules, 9:45 to 11:45 A. M.

PRACTICES.—Generally Signal Department employees are reexamined during regular work period. Following the origination of the controversy in this instance the carrier gave assurance that such consideration in that respect would be accorded the men by arranging, whenever convenient, to have these employees examined on other than their regular lay-over day.

RULES INVOLVED.—The rules involved in this dispute are:

"ARTICLE III. (7) Employees notified or called to perform work not continuous with regular work period shall be allowed a minimum of three (3) hours' pay for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis. Time will commence at time required to report for duty and end when work is completed and employees return to designated point at home station. Employees called in advance of and working continuous with regular work period will be allowed time and one-half until regular starting time and thereafter at pro rata rate for time worked during regular working period.

" Employees required to meet trains outside of regular working hours will, when practicable, be called.

"ARTICLE III. (8) Work performed on Sundays and the following legal holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight-time rate.

" Employees subject to call on Sundays and the above-specified holidays and desiring to leave home station or section will secure authority from (as named by Management).

POSITION OF EMPLOYEES.—Among the contentions of the employees it is submitted that the instructions to the employees to take rules examinations on their regular seventh day constitutes a call or notification for work for which they should be paid at the rate of time and one-half, and that the phrases "to perform work" and "work performed" in Sections 7 and 8 of Article III mean "and time" put in by an employee upon orders of the carrier, and that the rules reexamination is an arbitrary requirement primarily for the carrier's benefit, and that a man could present himself at any time within several months and serve the same purpose.

POSITION OF CARRIER.—Among the contentions of the carrier it is submitted that there is no rule in the agreement which provides for payment of time attending examinations necessary to establish employe's qualifications, and that section 7 and 8 of Article III clearly apply only to work performed and have never been understood to apply to rules reexamination, and that there is no record of any payment for time spent in attending examinations necessary to establish qualifications, and that the rules reexaminations are a requisite for qualification for the benefit of the employees as well as for the assurance of the management that safe and efficient operation is not jeopardized and does not constitute additional service "in the event it is not possible to arrange schedule for examinations to fall within the assigned working period of employees subject to them" and that the schedules of reexaminations are so arranged that but a minor number of signal employees are required to attend other than during their regularly assigned working period, and that it was the intention of the management to arrange "if practicable" to have them examined on other than their regular lay-over day, but such endeavor should not be cause for penalizing the carrier for alleged work when it may not be convenient to have the examination on days of regular assignment, and that, therefore, the claim represents a request for a new rule.

CONCLUSIONS.—While it is true that there is no specific rule in the agreement as contended by the carrier, and while rules reexamination in its strictest sense is not "work" as generally accepted by the rules, nevertheless the employees in this case were operating under the agreement existing between the parties entitled to the day off on this particular day, and this Division is of the opinion that the examinations should have been conducted on a regular date and other than the day off on Sunday "if practicable." In other words, this time belonged to the respective employees for their rest and recuperation. In this particular instance the record is silent as to why the carrier selected this particular day off, Sunday, to demand the time of the employees for the purpose of making a reexamination. Had the record in this case disclosed that due to peculiar circumstances over which the carrier had no control, that it was impracticable for the carrier to conduct the examination at any other time, this Division is of the opinion that the employees should have cooperated and given their time without complaint or the expectancy of remuneration, for the reason that the examination was for the mutual benefit of the employer and employees. It appears from the record in this case that the carrier arbitrarily fixed this particular date without any consideration to the convenience of the employees.

AWARD

The Referee is of the opinion, in which a majority of the Third Division concurs, that the claim of the employees is sustained, but with the understanding that this case is not to be regarded as a precedent, or to be construed that in every case shall employees be compensated for time while taking rules reexamination at the management's request.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 13th day of August 1935.