

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC

THE CHICAGO, ROCK ISLAND AND GULF RAILWAYS

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railway and the Chicago, Rock Island and Gulf Railway, that S. W. Snowden, J. H. Snowden, G. W. Christian and C. E. Reubell, required by the Carrier to go from their regularly assigned home station to Ardmore, Oklahoma, on Sunday, July 18, 1937, and D. V. Wycoff employed at the point of examination, for the purpose of taking examination on the Book of Rules and Regulations of the Operating Department, shall be paid for the time consumed and for expenses incurred thereby as provided by Article 16 of the Telegraphers' Agreement."

EMPLOYEES' STATEMENT OF FACTS: "The Order of Railroad Telegraphers has an agreement with the Chicago, Rock Island and Pacific; the Chicago, Rock Island and Gulf Railways, covering the wages and working conditions of Telegraphers on these properties, as shown in the scope rule and the wage scale. Ardmore, Oklahoma, one telegraph-clerk position, Tishomingo, Oklahoma, one agent-telegrapher position, Milburn, Oklahoma, one agent-telegraph position, Wapanucka, Oklahoma, one agent-telegraph position and Coalgate, Oklahoma, one agent-telegraph position all listed in the wage scale of the current Telegraphers' agreement. The incumbents of these telegraphers' positions all work eight hours per day exclusive of the meal hour, and have no Sunday assigned hours of duty.

"July 16th, 1937, train master Fertig ordered these Telegraphers to report to him at the Ardmore, Oklahoma, Agent's office, 10:00 A. M. Sunday, July 18th, 1937, for book of rules examination, which was held and all connected with this case were present at this class."

An agreement bearing date of January 1, 1928, is in effect between the parties.

POSITION OF EMPLOYEES: "The scope rule of the Telegraphers' Agreement covers agent-telegrapher positions at Coalgate, Wapanucka, Milburn and Tishomingo, Oklahoma and one telegraph job at Ardmore, Oklahoma, which telegraph position is listed under the caption 'Agent-telegraph', a typographical error.

"Article 1-(a) reads:

'All employes herein specified shall be paid on the hourly basis, except positions designated by an asterisk (*) will be paid monthly rate as full compensation for all services rendered.'

Article 16 does not contain the work 'duty', it says:

'When attending court or otherwise absenting themselves on other business for the company———.'

"They were called away from their place of work and could not have been available for work even had an emergency arisen, and on instructions from proper authority, which we contend is sufficient to warrant an award in our favor in accordance with the agreement, and we trust this Board will so order.

"The Committee affirms that these claims have been handled on appeal up to and including the highest official designated to hear appeals, without satisfactory settlement."

CARRIER'S STATEMENT OF FACTS: "On July 16, 1937, the Trainmaster instructed above mentioned employees to meet him in the Agent's office at Ardmore, 10:00 A. M., Sunday, July 18, for Book of Rules Examination, and there being no scheduled train service which they could use it was necessary that three of the employees use their automobiles to make the trip. These employees are not assigned to work on Sundays. They lost no time in making the trip to take the examination. One of the employees, D. V. Wycoff, is employed and living at Ardmore, the point of examination."

POSITION OF CARRIER: "The Operating Book of Rules, which governs telegraphers as well as other employees, provides that they are subject to the rules and special instructions and must pass required examinations, among which is the periodical re-examination on operating rules, and this is the examination that the telegraphers mentioned were required to take at Ardmore, Oklahoma.

"It is a practice of long standing to require employees to come to a central point to take such examinations outside of their assigned hours or days without payments being made therefor. In the instant case these telegraphers were not assigned to work on Sundays, and as the examination was given to them on a Sunday they lost no time.

"There is no provision in the telegraphers' agreement providing for payment to employees when required to take examinations outside of assigned hours. The employees cite Article 16 of their agreement. This article does not mention examinations, physical or rules—it has to do with employees attending courts or absenting themselves on business for the company, such as court hearings, investigations, etc., and, therefore, the taking of Book of Rules examination on a Sunday, a day on which they are not assigned to work, would not be a violation of this rule and the employees are, therefore, not entitled to compensation for time devoted to the taking of such examination outside regular assigned hours or days. They did not absent themselves on other business for the company, nor did they lose any time and, therefore, the claim should be declined.

"Attention of the Board members is called to this Division's Award No. 487, Docket No. MW-497 of August 30, 1937."

OPINION OF BOARD: This Division of the Board, with some misgivings, has accepted earlier precedents to the effect that service of the nature here involved, i. e., attending on rules re-examination, is not "work" as that term is used in the schedule provisions providing pay for work performed outside assigned hours and as a consequence there is no other schedule provision for compensation under the circumstances here involved and it has accordingly denied time claims.

The refusal to pay for time claims in the circumstances involved in this particular instance—where the claimants were not only required to report on their Sunday off but at another station and where they were required to travel from 68 to 156 miles and themselves furnish the transportation by

automobile, there being no trains running on that day on their branch—is so inequitable as to invite reconsideration of the justice of adhering to such precedents. As, however, they are of such widespread application, it is considered they ought not, now, be disturbed, notwithstanding the injustice involved in the particular instance.

The claimants not located at Ardmore are of course entitled to their automobile travel cost which the carrier offered to pay. Also, if they paid for it, a meal at Ardmore under Article 16 of the agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 there is no schedule rule providing for pay for time involved but claimants who traveled are entitled to expenses.

AWARD

Claim denied as to time, and sustained as to expenses.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1938.

SPECIAL CONCURRENCE—AWARD 773, DOCKET TE-762

While concurring in the denial of the time claims, I wish to register non-concurrence in some of the methods used and in some of the statements contained in the opinion written by the Referee.

The denial of the time claims is imperatively required, as there is a complete lack of obligation on the part of the carrier to pay them. This complete lack of obligation has been recognized and acted upon by the parties from the earliest time, as shown by incontrovertible evidence produced before this Board in this record. During the period of Federal control, the principle contended for by the carrier, as in this case, was confirmed by decision in Docket T-591, rendered by Railway Board of Adjustment No. 3, September 23, 1920. That decision covered a claim of the telegraphers on the Rock Island Lines for pay for time consumed by an employe in attending an examination upon the operating rules. Since the decision in that case, an unbroken stream of precedents sustaining the carrier's position in the present case has been rendered by all Boards having jurisdiction to decide such matters. The motivating reasons for such decisions are rationalized by this Division in its Award 487, rendered August 30, 1937, in which it said:

"There is no doubt but that some inconvenience and sacrifice of time was occasioned the claimants by the requirements of the carrier and the examination of the employes to determine their familiarity with the Book of Rules and Regulations of the Operating Department; at the same time such examination was as much to the advantage of the employes as to the carrier, inasmuch as it constituted a

means of certifying or recertifying the employes to the requirements of the positions of responsibility they held with the carrier."

It is obviously to the interest of employes to qualify. Their rights to promotion—indeed, their rights to remain on the jobs they hold—are based upon their fitness and ability to discharge the duties and responsibilities reposed in them; and to these considerations their very seniority rights are subordinate. It is the privilege of every employe to maintain his qualifications for his present employment and to prepare himself for promotion. It is an indubitable truth that if men are coddled, led, and not only paternalistically encouraged but actually paid to equip themselves for the responsibilities desired to be entrusted to them, the achievement of self-reliance, intelligence, and strength of character is more frequently thwarted than attained. With such considerations as these last mentioned we have no concern, but they are mentioned simply to show that the remarks of the Referee concerning injustices are utterly without foundation, besides being wholly beyond the scope of the matters that we are authorized to consider.

We should concern ourselves wholly with what the parties have agreed to, and I am of the opinion that the award, in dealing with ethical concepts, has not only entered a prohibited and irrelevant field, to no purpose, but has unjustly and without shadow of right or justification castigated the carrier. The carrier's offer to pay automobile travel costs was not itself required by any rule of the agreement; and this offer shows a disposition of fairness utterly inconsistent with the characteristics inferentially charged against it by the Referee.

The misgivings of this Division referred to by the Referee are, I assume, the expressions by Referee Spencer in Award 134 and Referee Swacker in Award 605. Referee Spencer stated that if the case were one of first impression the result might be different. Referee Swacker in Award 605 converts this expression into the proposition that,

"As stated by the Referee in Award 134, were this a new question the disposition of the Board would be to hold that services of the nature involved in this case are such as would fairly come within the contemplation of the word 'work' as used in the rules, . . ."

The extreme statement in Award 605 is not fairly a summary of what is said in Award 134, and is by no means a fair statement of later awards (see, e. g., Award 487), and is a pointless dictum.

/s/ J. G. TORIAN

We concur in the above.

/s/ R. H. ALLISON

/s/ GEO. H. DUGAN

/s/ A. H. JONES

/s/ C. C. COOK