Award No. 2512
Docket No. TE-2513

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Milwaukee, St. Paul & Pacific Railroad, that Leverman L. G. Dressel, regularly assigned 3:00 P. M. to 11:00 P. M. daily at Tower A-2, Chicago Terminals, be paid three hours at overtime rate under the call rule of the Telegraphers' Agreement, by reason of being instructed by the proper official of the Carrier to attend investigation as a witness in the office of Trainmaster Calligan, 9:30 A. M. until 12:30 P. M., March 11, 1940.

JOINT STATEMENT OF FACTS: Under date March 4th, 1940, as engine 1454 approached signal 74-L the home and distant signals were in a "stop" position at which time the engine crew received permissive indication on this signal permitting the engine to move only to the next signal, signal No. 40, which was at "stop" indication.

It seems upon approaching signal No. 40 the engine crew, at least the engineer, thought the signal had cleared sufficient to permit the engine proceeding, however, engine moved through the interlocking plant Tower A-2 at Western Avenue contrary to the rules and signals.

This resulted in an investigation being conducted with the engine crew involved and inasmuch as Leverman Dressel controlled the signals in question by levers from Tower A-2 on the date in question he was instructed by the Trainmaster to be present at the investigation to give information with respect to the position the signals were in at the time of this occurrence.

Parties to this dispute request the privilege of oral and other presentation at the time hearing is held.

POSITION OF EMPLOYES: There is in existence an agreement between the parties to this dispute bearing an effective date as of May 1, 1939, governing the rates of pay, hours of service and working conditions of Telegraphers, Telephone Operators (except switchboard operators), Agents, Agent-Telegraphers, Agent-Telephoners, Towermen, Levermen, Tower and Train Directors, Block Operators and Staffmen. On Page 20 of that agreement the following positions are listed.

Tower A-2	1st	Director	$1.00
	2nd	"	.96
	3rd	"	.96
	1st	Leverman	.84
	2nd	"	.84
	3rd	"	.84

allowed by the terminal officers in error by reason of a misunderstanding. Undoubtedly this will be introduced by the Telegraphers' Organization, however, certainly the allowance of this one claim by the terminal officers, in error, would not establish a precedent, therefore, should have no influence in the deliberations of you gentlemen with respect to the claim involved in this dispute.

It is the position of the Carrier that Rule 9-(c) is only applicable to "work" performed and would not apply to employe attending an investigation but to the contrary current Telegraphers' Schedule Rule 13, above quoted, would be applicable to an employe attending an investigation and if there was time lost or expenses involved the same would be paid for under Rule 13, which rule in accordance with its caption reading "Court Business and Investigations" was designed and agreed to for the very purpose of applying to instances such as is involved in this dispute.

As indicated above an employe attending an investigation or appearing in court would only be paid for time lost plus necessary actual expenses while away from home in accordance with current Telegraphers' Schedule Rule 13, quoted above.

In giving consideration to the circumstances involved in this claim and the information contained herein it is believed you gentlemen will realize that payment claimed would not come within the application of current Telegraphers' Schedule Rule 9-(c), therefore, should be declined.

OPINION OF BOARD: Claimant Dressel, at the time this dispute arose, was a Leverman, with a regular daily assignment from 3:00 P. M. to 11:00 P. M. at Tower A-2, Chicago Terminals. March 4, 1940, an engine moved through the interlocking plant Tower A-2 contrary to rules and signals. dent. The investigation concerned the conduct of the engine crew—not March 11, 1940, claimant was called to attend an investigation of the inciclaimant's. The time consumed in his attendance on the investigation was three hours—9:30 A. M. to 12:30 P. M.

For this time spent in attendance upon the investigation he made claim for compensation at the rate of time and one-half. The claim is based on Rule 9 which provides for the basic day, overtime and calls.

There is some conflict in the decisions of the Board upon the issue presented. By far the greater number of decisions hold that attendance upon investigations does not constitute "work" in contemplation of the basic day, overtime and call rules. Awards Nos. 134, 409, 487, 605, 773, 1032, 1816, 2132, 2508.

The employes rely upon Awards Nos. 588, 1545, 2032 and 2223 which hold that an employe, who, upon order of the carrier, attends the investigation of an incident, concerning which he is blameless, renders a **service** to the carrier; that "service" and "work" are synonymous in contemplation of basic day, overtime and call rules. Consequently claims for compensation under such rules were allowed.

In the light of the record in this case it is unnecessary to discuss, or choose between, the two lines of decisions. For, Rule 13 of the controlling agreement renders inapplicable the awards relied upon by claimant.

The rule reads:

"COURT BUSINESS AND INVESTIGATIONS

"An Employe required by the Company to attend court or absent from his duties on business for the Railroad Company will be allowed compensation equal to what he would have earned plus necessary actual expenses while away from home."

This rule is specific in its provisions for compensation to employes attending court or investigations. In the face of it the rules relied upon by claimant can have no bearing on the issue. See Award No. 2132. In attending the investigation claimant suffered no time loss. He claims nothing in the way of expense. His claim is without merit.

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 no violation of the agreement is established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 24th day of March, 1944.