

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Delaware, Lackawanna & Western Railroad Company, that Towerman Thomas Cornall, be compensated under the Call Rule of the Telegraphers' Agreement for time consumed by him obeying the Carrier's instructions to attend investigations on March 27 and 31, 1943, concerning accidents for which he was not responsible.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Thomas Cornall, claimant in the case, on March 27 and 31, 1943, was assigned to Michigan Avenue Tower, Buffalo, New York, working hours 11:00 P. M. to 7:00 A. M. On each of these dates (March 27 and 31) Mr. Cornall was instructed to attend, and did attend, at 2:00 P. M., investigation in the Superintendent's Office regarding an interlocking plant failure. Mr. Cornall was found not at fault.

POSITION OF EMPLOYES: As indicated in the Employees' Statement of Facts, Towerman Thomas Cornall on March 27 and 31, 1943, was assigned to working hours of 11:00 P. M. to 7:00 A. M. at Michigan Avenue Tower, Buffalo, New York. Mr. Cornall was instructed to attend, and did attend, an investigation at 2:00 P. M. on each date, March 27 and 31, as a witness which might assist the Carrier to determine responsibility for an interlocking plant failure which occurred previous to those dates. Because Mr. Cornall lost that many hours of his own time, on instructions of the Carrier, the Organization, in his behalf, filed claim for payment to him for such of his own time as was lost to him, citing the appropriate rule of the current Telegraphers' Agreement as authority. The payment as claimed was denied by the Carrier, notwithstanding the fact that said Carrier utilized Cornall's off-duty time to further its own interest, laying aside as it were a fundamental principle that the right to instruct or supervise carries with it the obligation to pay for that right.

To give the Board a clear perspective of the facts in the case, correspondence exchanged between the parties is next quoted:

R. D. West (Organization) to J. H. Lerbs (Carrier), May 17, 1943:

"Mr. Thomas Cornall, Towerman at Michigan Avenue, Buffalo, N. Y., was called from his regular sleep period to attend an investigation at Buffalo Passenger Station relative an interlocking plant failure at Michigan Avenue Tower, on March 27 and 31, respectively.

The Carrier, therefore, contends that the claim is without merit and should be denied for the reasons that:

First: The rule under which claim is made is not applicable because no work was performed.

Second: No other rule in the Agreement is applicable.

Third: There is no practice or precedent to justify the claim.

Fourth: No time was lost or expense incurred nor was the claimant deprived of his rest.

Fifth: The claim contemplates a new rule entirely, inconsistent with practices of long standing, not only so far as the Telegraphers' Organization is concerned but applying equally to other groups of employees having the same general rules.

OPINION OF BOARD: Thomas Cornall, the Claimant, is regularly employed as towerman at Michigan Avenue Tower, Buffalo, with assigned hours of 11:00 P. M. to 7:00 A. M.

On account of interlocking failure investigations were held by the Superintendent on March 27th and 31st, 1943, to determine responsibility for the failure which occurred during Cornall's tour of duty. The investigations were held at 2:00 P. M. at which time the Claimant was not on duty.

The Employees rely on Rules 4, 5, 11 and 13. We do not believe Rules 4 and 11 apply. Rule 5 is the Call Rule. This covers employees called to perform work and we do not believe it covers the situation which confronts us here which was attending an investigation during a period of time the employee was not working. Rule 13 of the Agreement is as follows:

"Rule 13—COURT DUTY AND INVESTIGATIONS

(a) Employees temporarily engaged in business of the Company outside the line of their regular duties, at court or otherwise, will be paid their regular wages and necessary expenses while so engaged, court fees and mileage to be assigned to the Company.

(b) Employees required to attend investigations, will be paid for all time lost if not at fault."

There has been some conflict in the awards of this Board covering the proposition involved but in the recent Award 2512, Judge Blake as referee, this Board said:

"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 Employee 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 employees attending court or investigations. In the face of it 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."

The Board is of the opinion that under the rule which confronts us, the record showing that the Employee lost no time in attending the investigation, he suffered no loss and as he had no expenses, an affirmative award is not justified.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violation of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.