

Award No. 2816

Docket No. TE-2789

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Telegrapher C. J. Lizenbery, Delano, San Joaquin Division, be compensated for one call, August 26, 1941, account required by the Carrier to attend Coroner's inquest at Delano, 2:00 P. M. that date, for the purpose of offering testimony in the case of Alfredo Castro, trespasser.

EMPLOYEES' STATEMENT OF FACTS: Claimant C. J. Lizenbery, Telegrapher, San Joaquin Division, was ordered by the Carrier to attend Coroner's inquest at Delano, 2:00 P. M., August 26th, 1941.

He attended the inquest as instructed.

Telegrapher Lizenbery is employed at Delano with regular assigned hours, 4:00 P. M. to 12:00 M. N.

There is an agreement in effect between the parties to this dispute and that agreement is on file with this Board.

POSITION OF EMPLOYEES: EXHIBITS "A" to "E" are submitted and made a part of this submission.

The claim is filed under Rule 16, Telegraphers' Agreement, which we quote:

"RULE 16.

Call Rule

(a) Telegraphers notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis. Each call to duty after being released will be a separate call.

(b) Telegrapher required to report for duty before assigned starting time and continues to work through his regular shift, shall be paid three (3) hours for two (2) hours' work or less, and time and one-half thereafter on the minute basis for the time required to work in advance of his regular starting time."

Rule 16 is as follows:

“(a) Telegraphers notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours’ work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis. Each call to duty after being released will be a separate call.

“(b) Telegrapher required to report for duty before assigned starting time and continues to work through his regular shift, shall be paid three (3) hours for two (2) hours’ work or less, and time and one-half thereafter on the minute basis for the time required to work in advance of his regular starting time.”

The specific portion of the above-quoted rule relied upon by the petitioner was paragraph (a). The Division will note that, in order that this agreement provision come into operation, the telegrapher must be notified or called “to perform work” not continuous with the regular work period. The carrier submits that when the claimant attended the coroner’s inquest from 2:00 P. M. to 3:00 P. M. on August 26, 1941, he was not performing “work” as that word is used and intended in Rule 16 (a). That this position is correct has already been decided by this Division: See Awards 2132 (which involves the same petitioner and carrier as in the instant case and also the application of the current agreement) and 2512.

CONCLUSION

The carrier submits that the claim in this docket is not supported by Rule 16 or any other rule of the current agreement and, therefore, is without basis and should be denied.

OPINION OF BOARD: The Claimant held a regular assignment as Telegrapher at Delano, California, from 12:00 midnight to 8:00 A. M. From 2:00 to 3:00 P. M., August 26, 1941, he attended a Coroner’s inquest in connection with the death of a trespasser on the Carrier’s property. The claim is for a two-hour call at time and one-half.

The Petitioner’s submission states that the Claimant “was ordered by the Carrier to attend the Coroner’s inquest” and that he attended “as instructed.” The Carrier says that it “can not conduct a Coroner’s inquest; such inquests are held pursuant to proper governmental authority, and attendance thereat is mandatory upon those required as witnesses. Such proceedings are not in any way under the Carrier’s control.”

On this meager showing we must resolve against the Claimant the very first question presented by the record, namely, whether he was “notified or called” within the meaning of Rule 16. The statutes of the State of California are not before us and we have no way of determining from the record whether the Claimant’s attendance at the inquest was by virtue of authority of law communicated to him through the Carrier, or in the Carrier’s own interests. If the command emanated from an authorized public official, as the Carrier’s submission would seem to suggest, the Claimant’s response was in discharge of an obligation resting upon him as a citizen.

The burden of making out a case being upon the Petitioner, the claim must be denied upon the basis of a failure of proof.

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 Employees involved in this dispute are respectively carrier and employees 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

No violation of the Agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1945.