

Award No. 4250
Docket No. TE-4342

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
BOSTON & MAINE RAILROAD

STATEMENT OF CLAIM: Claim TE-184 of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad that—

(1) W. E. Comer regularly assigned first trick train director at Lowell Jct., Mass. with, hours from 7:00 A. M. to 3:00 P. M., who was required by the Carrier to spend three hours between 7:00 P. M. and 10:00 P. M. on April 7th to attend a lecture at Lawrence Station on new rules, shall be compensated for such service at the time and one-half rate.

(2) J. A. Collins regularly assigned as second trick train director at Lowell Jct., Mass., with hours from 3:00 P. M. to 11:00 P. M., who was required by the Carrier to spend two hours in attending a lecture from 10:00 A. M. to 12:00 noon on April 8th at Lawrence Station on new rules shall be paid for a call for such service at the time and one-half rate.

JOINT STATEMENT OF FACTS: At Lowell Jct., Mass. there are employed three (3) Train Directors:

W. E. Comer	7:00 A. M. to 3:00 P. M.
J. A. Collins	3:00 P. M. to 11:00 P. M.
P. J. Moran	11:00 P. M. to 7:00 A. M.

On April 25, 1948 a new book of operating rules became effective and Bulletin No. 11 was issued, signed by General Manager F. W. Rourke, a copy of which is shown below.

Train Director W. E. Comer attended lecture in Lawrence, Mass. Station from 7:00 P. M. to 10:00 P. M. on April 7, 1948.

Train director J. A. Collins attended lecture in Lawrence Station 10:00 A. M. to 12:00 noon on April 8, 1948.

These lectures were held previous to the Book of Rules becoming effective.

"BOSTON AND MAINE RAILROAD NOTICE

No. 11 (Port. Div.)

Boston, Mass., April 1, 1948

TO ALL EMPLOYEES:

A new General Rule Book, to be effective April 25, 1948 is now being distributed to all employees who are governed by the 'Rules for the Government of the Operating Department.'

- (b) The lectures were primarily for the benefit of the Claimants.
- (c) Previous decisions of this Division preclude recovery.
- (d) Precedent and practice on this Carrier are opposed to the contention of the Claimants.
- (e) The Operating Rules, which were a part of their contract of employment, required the Claimants to familiarize themselves with the rules.
- (f) Since the safety of the public and of other employees was involved, public policy demands that all employees should take every available means to become thoroughly conversant with the rules.

(Exhibit not Reproduced.)

OPINION OF BOARD: On April 25, 1948, a new book of operating rules became effective. A notice to all employees stated, in part:

"All concerned must promptly and thoroughly study the new Rules, attend Class Lectures to be conducted by the several Examiners (dates and times of Classes will be bulletined by Examiners), must obtain information as to any Rule not fully understood from Examiners, and become thoroughly familiar with the Rules prior to their effective date."

Pursuant to the foregoing instructions, Claimant Comer attended a Rules meeting at Lawrence, Massachusetts, from 7:00 P.M. to 10:00 P.M., on April 7, 1948, a period of time outside his working hours. Claimant Collins attending a similar meeting from 10:00 A.M. to 12:00 noon, on April 8, 1948, a period outside his regular working assignment. Each claims pay for the time spent at the Rules meeting at the time and one-half rate.

The dispute is controlled by the following Rules:

"Employees 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 time will be allowed on the minute basis." Article VII (b), current Agreement.

"If required to attend court or inquest, investigation (except where they are found to be at fault), examination for color sense and hearing at the request of the Management at such a time as they can also cover their regular position, they will be paid the same as if called to perform service under Article 7 in addition to legitimate expenses while away from home. Any fee or mileage accruing will be assigned to the carrier." Article XVIII (in part), current Agreement.

Article XVIII of the current Agreement does not authorize payment for time used in attending class lectures on the rules. It authorizes payment only for attending court or inquest, investigations, and examinations for color sense and hearing. No words are employed which can be construed to include class lectures on operating rules. Where a rule specifically names those within a class, except where it appears that they are listed for descriptive purposes only, an intention is indicated to exclude all those not mentioned. Consequently, this Article of the Agreement does not authorize the payment of this claim before us. It has been held, and we think correctly so, that employees in qualifying themselves for positions and keeping themselves qualified, and to achieve promotion, are serving themselves primarily. Awards 1427, 2223. To recover compensation for attending class lectures on the operating rules, such right must be found from the language of the Agreement. Awards 2828, 3302. This Board does not sit as a court of equity. We must interpret the applicable Agreement provisions as they were drawn by the parties. It would be a usurpation of authority to allow compensation to an employee where the Agreement does not authorize it. The remedy is by negotiation and not by faulty interpretation.

The quoted portion of Article VII does not authorize compensation for attending class lectures on rules. The statement therein contained that "employees notified or called to perform work not continuous with the regular work period" precludes any notion that it was intended to include attendance of class lectures on operating rules. The word "work" as herein used was never intended to have such a generic meaning as the Organization here contends. Awards 2508, 2512, 3230, 4181. If it had been so intended, there would have been no reason for including Article XVIII in the current Agreement.

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

That both parties to this dispute waived oral hearing thereon;

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of December, 1948.