Award No. 4910
Docket No. TE-4945

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY (Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York Central Railroad Company, Line West of Buffalo.

(1) That the Carrier violated the terms of the Telegraphers' Agreement when it required C. A. Parr, third trick leverman at "CT" Tower, Cleveland, Ohio, to attend an investigation commencing 8:30 a.m. October 14, 1947, as a Carrier witness and has failed and refused to compensate him in accordance with the rules of the Telegraphers' Agreement; and

(2) That Leverman C. A. Parr, shall be compensated on a call basis for services rendered at the investigation outside of his regular assigned hours on October 14, 1947.

EMPLOYES' STATEMENT OF FACTS: Mr. C. A. Parr was assigned Third Trick Leverman at "CT" Tower, Cleveland Union Terminal, Ohio, on the morning of October 9, 1947. He was ordered by the Carrier to report at the Assembly Room of the Cleveland Union Terminal 8:30 a.m., October 14, 1947 to attend an investigation in connection with motor 202 running through puzzle switch 473, 5:25 a.m., October 9, 1947. Ordered to the investigation in addition to Parr were the General Yard Master, Signal Supervisor, an Engineer, a Helper-Fireman, a Train Director and a Switch Tender.

Appended is Employes' Exhibit "A" which is a transcript of the investigation and by reference is made a part of this Statement of Facts. The Transcript will prove that Parr's attendance at the investigation was only as a witness for the Carrier.

On the morning of the investigation Parr went off duty at 7 a.m., October 14, 1947. Parr could not go home and return in time for the investigation and finally reached home about noon. Parr was not at fault in any way, was not charged nor disciplnied and filed claim for a call of 3 hours' pay at rate of time and one-half for attending the investigation during his off-duty hours. Claim was denied.

POSITION OF EMPLOYES: There is in effect between the parties an agreement bearing effective date of July 1, 1946, copies of which are on file with the Board, and from which the following rules are cited:

"The quoted portion of Article VII does not authorize compensation for attending class lectures on rules. The statement therein contained that 'employes 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."

CONCLUSION

The carrier has shown that—

1. The Call Rule, Article 5, under which the claim is made, has not at any time been applicable to time attending investigations;

2. Article 19, the "Attending Court or Investigation" rule, the only Agreement rule which pertains to time attending investigations, provides for payment only when employe loses time from his regular assignment;

3. Claimant lost no time from assigned working hours and performed no work;

4. The Telegraphers' request to revise Article 19—included in Mediation which is still pending—so as to extend application of the Call and Overtime rules to time attending investigations is conclusive evidence that existing rules do not support the claim;

5. Awards of the National Railroad Adjustment Board support the carrier's position;

6. The claim is tantamount to a request for a new rule wholly incompatible with accepted practices in effect under the same or comparable rules for over 45 years;

7. The claim is not supported by Agreement rlues, is without support on any reasonable premise and should be denied.

(Exhibits Not Reproduced.)

OPINION OF BOARD: This case is similar to the one this day decided by Award No. 4909, in that, except for the fact claimant was the Leverman on duty at the time in question, his rights depend on the same factual situation and are governed by the identical principles as those fully set forth and considered in such Award.

By reason of what has just been stated, disposition of this claim is governed by Award 4909, to which we adhere, and a sustaining Award must be denied.

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 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 under the facts and circumstances disclosed by the record claimant was personally interested in the investigation he attended at the direction of the Carrier outside the hours of his regular assignment and therefore had no claim for compensation under the provisions of the Call Rule of the Agreement for time spent in attending such investigation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.