

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 J. E. Kristoff, Third Trick Operator at Frankfort Street, Columbus, Ohio, to attend an investigation in the Chesapeake & Ohio Railroad Train Master's office at Columbus, Ohio, commencing at 10:00 a.m., May 6, 1949, as a Carrier witness, and has failed and refused to compensate him in accordance with the rules of the Telegraphers' Agreement; and,

(2) That Operator J. E. Kristoff shall be compensated on a call basis for the time he was away from his home and for services rendered at the investigation outside of his regular assigned hours on May 6, 1949.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. E. Kristoff was regularly assigned third trick telephoner-leverman at Frankfort Street Tower, Columbus, Ohio with assigned hours 11:00 p.m. to 7:00 a.m. He was ordered by the Carrier to report to the Trainmaster of the Chesapeake and Ohio Railroad, Columbus, Ohio, 10:00 a.m., May 6, 1949 to attend an investigation in case of Engine 161 striking rear end of Extra 1651, east end of Mound Street Yard, Columbus, Ohio, at 6:18 a.m., May 2, 1949. Ordered to the investigation in addition to Kristoff were one Engineer, one Fireman, two Conductors, two Flagmen and one brakeman.

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 Kristoff's attendance at the investigation was only as a witness for the carrier.

When notified to appear at the investigation Kristoff asked the Management to relieve him the night of May 6 because he did not think he would have sufficient rest after attending the investigation as it is his custom to retire for his rest as soon as he reaches home about 8 a.m. The carrier advised him that if he was relieved he would have to stand the loss of pay as the carrier was not obligated to pay him under such circumstances. Upon receipt of this information Kristoff cancelled his request to be absent from work that night.

Kristoff was not charged nor disciplined and was not at fault in any way and filed claim for 5½ hours pay at rate of time and one-half 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 employe 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 '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 to 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 rules, is without support on any reasonable premise and should be denied.

(Exhibits Not Reproduced.)

OPINION OF BOARD: J. E. Kristoff, the claimant herein, was the regularly assigned third trick Telephoner-Leverman at Frankfort Street Interlocking Tower, hours 11 p.m. to 7 a.m. This interlocking jointly served the Chesapeake and Ohio Railway and the New York Central Railroad but claimant is an employe of the last named Carrier. On the morning of May 2, 1949, and while claimant was on duty, there was collision between a C&O engine and train within limits of the interlocking plant in quetsion.

The Carrier ordered Kristoff to attend an investigation regarding the collision at the office of the C&O Railway Trainmaster in the City of Columbus. He complied with the order, attended the investigation without loss of time from work and now seeks compensation on a call basis for the time he was away from his home and for services rendered at the investigation.

Under our Awards 4909 and 4911, to which we adhere, claimant was entitled to compensation under Rule 5 of the current Agreement unless the record facts disclose a mutuality of interest in the investigation.

Turning to the record, which includes a transcript of the evidence, we find that except for Kristoff, only seven other persons were required to attend the investigation. They were the crew members of the engine and train involved in the collision. All were employees of the C&O. In addition, we find that at least six of such employees, and perhaps the seventh, had been charged by the C&O with the responsibility for the accident. In fact an express statement to that effect is to be found in an opening statement which appears in the record of the testimony of each of the six employees to whom we have just referred. These facts, in our opinion, definitely indicate the claimant was required to attend the C&O investigation as a witness to substantiate the charges it had made against its employees and compel the conclusion that so far as he was concerned when he did so attend there was no mutuality of interest involved.

The conclusion just announced requires a sustaining Award. Compensation, however, will be limited to time actually spent by claimant while in attendance at the investigation. We do not understand that the rule on which his right to recover is founded contemplates pay for time spent away from home while going to and from his place of work. Claimant's headquarters were in Columbus and the investigation was held in the same city. If he spent any more time in going to the place where it was held than he would have in going to his own headquarters the record does not disclose it.

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 claimant is entitled to pay for attendance at the investigation under the provisions of Rule 5 of the Agreement.

AWARD

Claim sustained per Findings and the Opinion.

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.