

Award No. 11048

Docket No. CL-10789

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended particularly Rule 4-A-6, when it required certain clerical employees to attend meetings, on their own time, outside their regular tours of duty, in the office of the Assistant Train Master, Outer Yard, Toledo, Ohio, Lake Region, On February 7, April 1 and May 2, 1957.

(b) The Claimants named in this case should each be allowed pay, at the appropriate rate, for the actual time spent attending these meetings, with a minimum of three hours' pay at the pro rata rate, for each of the three dates shown, February 7, April 1, and May 2, 1957.
(Docket 219)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimants in this case held positions and the Pennsylvania Railroad Company — hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time without quoting in full.

The named Claimants in this case held positions of Yard Clerk in the Assistant Train Master's Department, Toledo, Ohio, Lake Region. They had seniority dates on the seniority roster of the Lake Region in Group 1.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. On February 7, April 1 and on May 2, 1957, certain employees were required by Carrier's Assistant Trainmaster to attend meetings outside their regular hours of work assignments. Carrier's notice dated March 26, 1957 addressed to certain employees read as follows:

"A meeting for Clerks will be held in office of Assistant Train Master at Outer Yard, Toledo, Ohio, Monday, April 1st, 1957, at 9:30 A. M.

All clerks not working First trick (7:00 A. M. to 3:00 P. M.) on this date are to attend this meeting."

Carrier's notice dated April 28, 1957 addressed to certain employees read as follows:

"Arrange to attend a meeting in my office at Outer Yard at 9:00 A. M., Thursday, May 2nd, 1957."

Both notices are signed by Mr. W. P. Davis, Assistant Train Master. A copy of the notice for the meeting of February 7, 1957 is not in the record. The notices do not state the purpose of such meetings. But in the Joint Submission dated October 4, 1957, the Carrier in a statement of its position says:

"The meetings in question held by the Assistant Train Master, Toledo, Ohio, on the dates for which claim is presented were called to discuss safety activities of employees and to direct clerical errors to the attention of clerks in an effort to eliminate errors."

The question to be resolved is whether Claimants' attendance at the meetings called by the Carrier constitutes "work" or "services" under Rule 4-A-6. This Rule reads:

Rule 4-A-6:

"(a) Regularly assigned employees notified or called to perform work between their regular work periods and not continuous therewith will be allowed a minimum of three hours at the pro rata rate for two hours work or less; time held on duty in excess of two hours to be paid for at the rate of time and one-half. Regular employees so called who are unable, because of being called, to cover their regular assignment will be paid not less than they would have received if they worked their regular assignment.

"(b) Regularly assigned employees notified or called to perform work continuous with, and in advance of their regular work period, will be allowed time and one-half on the minute basis for such advance time.

"(c) A regularly assigned employee notified or called under the provisions of paragraphs (a) or (b) of this rule (4-A-6), to

perform service in other than his regular position will be compensated at the rate of the position filled or at his regular rate, whichever is higher.

"(d) An extra employee notified or called to perform service will be paid at pro rata rate for actual time worked with a minimum of four hours, exclusive of the meal period. Such employee required to perform a total of more than six hours' service will be allowed a minimum of eight hours' pay at the pro rata rate."

Carrier contends that "the individual employees did benefit from these meetings when their errors were discussed to the end that they be eliminated and they became better acquainted with their duties and responsibilities."

The Organization argues that attendance "at bona fide safety meetings is generally on a voluntary basis and is not compulsory, and such meetings are generally open to all employees and their families." In this case, they contend, the meetings were confined to twenty-two clerical employees and were compulsory. The Organization further argues that "the Carrier has failed to show that clerical errors committed at Toledo Outer Yard offered any justification for its action requiring the second and third trick clerks at the location to provide from two and one-half to three hours of uncompensated service each month to the benefit of the Carrier, in an effort to eliminate errors. The elimination of errors would benefit the Carrier materially and financially."

Each of the parties have cited numerous Awards by this Board. In Award 4250 (Carter) we denied the claim because the employee attended a meeting to become acquainted with a new book of operating rules. We said in that Award:

"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."

We denied the claim in Award 10073 (Webster) involving similar facts. See also Award 7577 (Shugrue) where we held that "attending rules reexamination classes is not the 'work' or 'service' referred to in the applicable rules which could give rise to a valid claim for overtime payments."

In Award 4619 (Carmody) we denied the claim because "the Assistant Train Master, working a different trick, wanted to check on his (Claimant's) qualifications before assigning him permanently to the position. In the light of claimant's most recent history this was not an unreasonable request."

We properly held that Rule 4-A-6 was not violated because "this rule is intended to cover and properly should cover notice or call to do productive work or render productive service in the interest of the Carrier. It is an investment from which Carrier gets or seeks to get direct benefit. Claimant here was not producing anything of value for the Carrier."

We denied a claim for time spent attending the annual meeting of Forty Year Veteran Employees sponsored by the Carrier. Award 10388 (Dugan).

The claims before us here do not come within the principles enunciated in the Awards above quoted. In the first place, the notice requiring Claimants to attend the three separate meetings do not state their purpose. Secondly, there is no evidence in the record that safety problems solely affecting the Claimants were discussed, nor were these safety problems of such a nature that they could not have been discussed with each group of employees during their respective assigned work hours. If the safety problems were of such great import that they affected the welfare of the employees then the record should have so stated. Thirdly, there is no evidence of any particular type of clerical errors which can or may be attributable to the entire group of employees. If one or a small number of employees were guilty of clerical errors there is ample procedure for instruction and discipline. It is not justifiable to call in a group of employees for probable errors of a few. If there was a change in work procedures which all employees should know, it would have been to the benefit of the Claimant to attend such meetings. But there is nothing in the record to justify this position.

Carrier may not indiscriminately order employees to report for meetings outside their regular work hours. They may be so ordered where such a meeting will primarily benefit the employee, where it is of mutual benefit to the employee and the Carrier, where the meeting is to permit the employee to qualify for a position, where attendance is optional and not compulsory, and when the meeting is called to acquaint the employee with new operating rules and procedures. The meetings on February 7, April 1 and May 2, 1957, do not fall within these categories. See Award 10808 (Moore). Those employees who were obliged to and did attend the meetings performed "work" or "service" under the terms of the Agreement and are entitled to compensation as provided in Rule 4-A-6.

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

That the parties waived oral hearing;

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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.