

Award No. 11965
Docket No. TE-10350

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee on the New York Central Railroad—Western District, that:

1. The Carrier violated Article 19, Section 3 of the agreement between the parties when it refused to pay employes whom it required to take a second examination (written or oral), or attend classes on operating rules, or to attend instruction classes in connection with operating rules, in the calendar year of 1957.
2. The Carrier shall be required to pay the regular rate per hour, as specified in Article 19, Section 2 (f), to the following named employes, and for the date and time shown:

| Name | Date | Time Claimed |
|-------------------|----------------|--------------------|
| B. V. Tatum | March 5, 1957 | 2 hours |
| H. V. Kantz | March 14, 1957 | 2 hours |
| J. S. Smith | March 12, 1957 | 2 hours |
| E. C. Swanson | March 15, 1957 | 5 hours 30 minutes |
| W. J. Boiko | March 15, 1957 | 1 hour 15 minutes |
| F. Bush | March 14, 1957 | 4 hours |
| T. E. Good | March 14, 1957 | 3 hours 15 minutes |
| G. W. Hoover | March 15, 1957 | 5 hours |
| V. C. Schlicht | March 14, 1957 | 5 hours |
| J. L. Witter, Jr. | March 12, 1957 | 3 hours 30 minutes |
| J. L. Witter, Sr. | March 13, 1957 | 3 hours 30 minutes |

| Name | Date | Time Claimed |
|------------------|----------------|--------------|
| C. E. Smothers | March 14, 1957 | 4 hours |
| D. J. Casadonte | April 5, 1957 | 3 hours |
| F. W. Shirk | April 5, 1957 | 3 hours |
| B. D. Dorazewski | April 5, 1957 | 3 hours |
| C. H. Foss | March 27, 1957 | 2 hours |
| N. G. Whitmore | April 1, 1957 | 2 hours |
| H. P. Creet | April 1, 1957 | 2 hours |
| W. Y. Sandison | April 5, 1957 | 2 hours |
| R. C. Harris | April 5, 1957 | 2 hours |
| J. C. Reid | April 1, 1957 | 2 hours |
| F. J. Smolek | April 2, 1957 | 2 hours |
| D. Curran | April 1, 1957 | 2 hours |
| K. W. Fox | April 2, 1957 | 2 hours |
| B. T. Sisson | April 4, 1957 | 2 hours |
| J. E. Smith | April 3, 1957 | 2 hours |
| L. M. Parr | April 1, 1957 | 2 hours |
| R. S. Betts | April 3, 1957 | 2 hours |
| A. D. Worcester | April 3, 1957 | 2 hours |
| E. A. Priebe | April 3, 1957 | 2 hours |
| G. Vasickanin | April 3, 1957 | 2 hours |
| J. A. Broa | April 1, 1957 | 2 hours |
| D. S. Piunno | April 3, 1957 | 2 hours |
| D. J. Purney | April 10, 1957 | 2 hours |

EMPLOYES' STATEMENT OF FACTS: The named claimants received the following Yellow Bulletin Notice on January 9, 1957, issued by the Superintendent of the Carrier at Chicago, Illinois:

"ALL CONDUCTORS
ALL TRAINMEN
ALL ENGINEMEN
ALL YARDMEN
ALL TELEGRAPHERS AND DISPATCHERS
ALL AGENTS

"NOTICE

NO. NYC - 250 MC-138

New 'Rules of the Operating Department' dated October 28, 1956, for the purpose of information only, will be distributed to all em-

Rules" will be compensated therefor. The claim for completing a questionnaire on the rules on claimants' own time was denied, the Board stating that the claim was not supported by the rule.

Similarly, the Third Division has held that claims for compensation for attending class or examination on operating rules must be denied in the absence of a specific rule covering the matter; Awards 7577, 7681.

In Third Division Award No. 6906 the applicable agreement contained a provision for compensation for examinations attended on rest days and the claim was for compensation for examinations attended on off duty hours. The claim was sustained only to the extent of the actual wording of the agreement, Referee A. L. Coffey stating that the Board shall not be used by the parties to gain by interpretation what was not yet settled by the parties in negotiation.

Therefore, under the principles of the First and Third Divisions, National Railroad Adjustment Board, the claims in this dispute are not valid since they are not supported by the wording of the applicable agreement.

CONCLUSION

1. The questionnaire completed by claimants on a voluntary basis and of their own volition did not constitute the first class or examination in operating rules.
2. The regular book of rules classes held by Carrier in March and April, 1957, were the one class or examination in operating rules held during 1957.
3. The wording of Article 19, Section 3, of the Telegraphers' Agreement does not support the claim presented by the Organization.
4. Awards of the National Railroad Adjustment Board support Carrier's position in this dispute.
5. The claim is wholly without merit and should be denied.

All evidence and data set forth herein have been considered by the parties in conference.

OPINION OF BOARD: The issue is whether Carrier is obligated to pay Claimants for attending a class or examination in connection with operating rules, where Carrier within the same calendar year had previously required Claimants to fill out the answers to 906 printed questions. Article 19, Section 3 of the effective Agreement provides in part:

"The following regulations shall apply in connection with employees required to take examinations or attend classes on operating rules:

"Subject to the exceptions listed below, an employe required to take examination, (written or oral) or to attend instruction in connection with operating rules shall be compensated therefor upon the basis of all time consumed from time required to report for such

examination or instructions until released from same. Such compensation will be same as is provided for in Section 2 of this article.

"EXCEPTIONS

"(a) One class or examination in Operating Rules each calendar year. . . ."

The prior requirement of completing 906 answers to printed questions was an examination within the meaning of Article 19, Section 3, and such prior requirement exhausted the exception of Article 19, Section 3. It follows that Claimants are due compensation for the subsequent and second period, a class of instruction or examination.

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 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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.