



Award Number 17539

Docket Number SG-18112

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL COMPANY

(Formerly New York Central Railroad—Lines West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Lines West of Buffalo):

On behalf of Signal Maintainer R. W. Hartsock for three (3) hours pay at the overtime rate account on July 28, 1967, he was required by the Carrier to submit to a special physical examination at Indianapolis, Indiana, and was held in Doctor Davis' office there until 4:20 P.M., which resulted in his working from 3:00 P.M. until 6:00 P.M.—beyond his regular 3:00 P.M. quitting time—before he was finally released from duty at his assigned headquarters in Marion, Indiana.

EMPLOYEES' STATEMENT OF FACTS: Claimant R. W. Hartsock Signal Maintainer with headquarters at Marion, Indiana, was given written instructions by Signal Supervisor R. E. Tomlin to report for physical examination to Company Doctor Davis, whose office hours were from 1:00 P.M. to 4:00 P.M. each afternoon. (Brotherhood's Exhibit No. 1).

In accordance with his instructions Mr. Hartsock reported to Doctor Davis office in Detroit, Michigan July 28, 1967; was released by the Doctor at 4:20 P.M. and arrived at his headquarters at 6:00 P.M. three (3) hours after his regular quitting time on 3:00 P.M.

Mr. Hartsock made claim for three (3) hours overtime under provisions of Rules 15 and 59 of the current Signalmen's Agreement, which read as follows:

Time—Return to Home Station

“RULE 15. Hourly rated employees sent from headquarters and who return to headquarters the same day shall be paid continuous time, exclusive of meal period, from time reporting for duty until released at headquarters computed on the minute basis for all straight time work, overtime work, straight time for all time traveling or waiting except on rest days and holidays when such traveling or waiting shall be paid for at the overtime rate. This rule shall not apply to employees holding regular relief assignments involving work at more than one point.

Examinations

"RULE 59. Examinations or re-examinations which employes may be required to take will, if possible, be conducted during regular working hours without deduction in pay therefor."

The claim was handled in the usual and proper manner, up to and including the highest officer of the Carrier designated to handle such disputes, without obtaining a satisfactory settlement.

Pertinent correspondence has been reproduced and attached hereto as Brotherhood's Exhibit Nos. 1 through 14.

There is an Agreement in effect between the parties to this dispute bearing an effective date of March 1, 1951, as amended which is by reference made a part of the record in this dispute.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: There is in effect between the parties of this dispute an Agreement dated March 1, 1951, copies of which are on file with your Board and which by reference is made a part hereof.

Claimant's Medical Record shows that he underwent lumbar disc surgery, non-service connected injury, in January 1964. He was given return-to-service-examination March 26, 1964, and was found physically qualified for continued service with the Company. Claimant's Medical Record further shows a second operation of like nature in June 1966, with return-to-service-examination September 7, 1966. As result of these operations, and the condition of claimant's back, the Carrier's Medical Department required that he have a special examination by a Consultant Orthopedic Surgeon, and that examination was performed November 9, 1966 by Dr. Thomas Horwitz in Indianapolis, Indiana. Claimant was qualified for continued employment with the Carrier, with recheck examination ordered in July 1967.

By letter dated July 20, 1967, claimant was instructed by Signal Supervisor R. E. Tomlin to report to the office of Dr. S. J. Davis, Consultant Orthopedic Surgeon, on July 28, 1967 for re-check examination. At this time (July 28, 1967) Signal Maintainer Hartsock held regularly assigned signalman's position with headquarters at Marion, Indiana, some sixty-five highway miles from Indianapolis, Indiana. Signal Maintainer Hartsock's assigned hours were 7:00 A.M.-3:00 P.M., Monday through Friday. Dr. Davis' office hours were 1:00 P.M.-4:00 P.M., no appointments. On July 28, 1967, claimant presented himself at the office of Dr. Davis at 1:00 P.M., but was not examined immediately—examination completed at 4:20 P.M. Claimant contends that he did not arrive back at his headquarters point (Marion, Indiana) until 6:00 P.M., three hours past his normal off-duty time of 3:00 P.M. This three-hour period (3:00 P.M.-6:00 P.M.) constitutes basis for the claim herein presented to your Board. Rules 15 and 59, current Schedule Agreement, have been cited in support of the claim.

OPINION OF BOARD: The issue herein is whether or not "taking a physical medical examination" is the type of service contemplated by Rule 15 of the Agreement.

The undisputed facts are that Claimant was ordered by Carrier to report for a physical examination by Carrier's physician at Indianapolis, Indiana.

The scheduled appointment for said examination was 1:00 P.M., July 28, 1967, at the doctor's office. Claimant appeared at said office at the scheduled time, but was not seen by the doctor right away. He left the doctors office at 4:20 P.M. on said date; and inasmuch as his quitting time was 3:00 P.M. and not returning to his headquarters at Marion, Indiana, until 6:00 P.M., he is claiming overtime for said three hours.

Claimant bases his claim on the provision of Rules 15 and 59 of the Agreement.

Rule 15 provides:

"Hourly rated employees sent from headquarters and who return to headquarters the same day shall be paid continuous time, exclusive of meal period, from time reporting for duty until released at headquarters, computed on the minute basis for all straight time work, overtime for all overtime work, straight time for all time traveling or waiting except on rest days and holidays when such traveling or waiting time shall be paid for at the overtime rate. The rule shall not apply to employees holding regular relief assignments involving work at more than one point."

Rule 59 reads as follows:

"**Examination or re-examinations**, which employees may be required to take will, if possible, be conducted during **regular working hours** without deduction in pay therefor."

The Organization's position is that Carrier is required to pay its signal employees in accordance with the Agreement at any time the Employee is carrying out the instructions of his superior officer; that Rule 15 of the Agreement requires Employees to be paid until they are released at their headquarters and that said rule requires that said time be computed on the minute basis and be paid on a straight time or overtime basis according to whether they are working on regular or overtime basis; that Rule 59 was violated in this instance because it was possible for said examination to have been made during Claimant's regular working hours if Claimant had been so instructed by Carrier.

Carrier's defense to this claim is that Rule 15 of the Agreement has no relationship to an Employee who is required to report for physical examination; that Claimant's physical examination was scheduled and conducted within the intent and purpose of Rule 59 of the Agreement in that he suffered no wage loss as a result of said examination and that Carrier made a reasonable effort to conduct said examination; that said Rule 59 does not provide for additional compensation under any circumstances; that this Board is without jurisdiction to impose penalties not specifically provided for in the applicable rules.

This Board, in Award No. 3302, involving a claim for pay for taking a physical examination, clearly stated the principal controlling the determination of this dispute, when in said award, we stated as follows:

"To bring this claim within these rules we must hold that reporting and undergoing a physical examination is 'work'. This Division as early as Award 134 held that the term 'work' as used in collective agreements in the railroad industry has usually been

construed to mean work of the type to which an employe is regularly assigned. Clearly under that definition, taking a physical examination is not work within the cited rule."

Applying said principal to the issue herein, we find that "taking a physical examination" is not the type of service contemplated by Rule 15 of the Agreement, and therefore Carrier did not violate said rule in this instance.

Further, Claimant failed to produce any evidence that Carrier acted arbitrarily in scheduling said examination. The fact that Carrier scheduled said examination for 1:00 P.M. on the day in question, rather than earlier, does not in our opinion amount to a violation of Rule 59. Rule 59 states that "if possible" said physical examinations will be conducted during working hours. It is not mandatory, therefore, to have an Employe take a physical examination during working hours. Carrier stated, and which was not disputed by the Organization, that the doctor's office hours on the date in question was 1:00 P.M. to 4:00 P.M. Thus, it is our conclusion that Carrier did not violate Rule 59 herein.

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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.