

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad, that:

Block Operator F. K. McCall account reporting for periodical on June 24, 1963, the regular assigned rest day of Claimant — Regulation 4-O-1 (b).

EMPLOYEES' STATEMENT OF FACTS: Claimant was a Group 2 employe, regularly assigned second-shift block operator at "VO" block station, Butler, Pennsylvania, with assigned duty hours 7:00 A. M. until 3:00 P. M., and rest days of Sunday and Monday.

Carrier required that she submit to a physical examination during the month of June, 1963. Accordingly, she contacted the nearest Company Doctor at Tarentum, Pennsylvania, for an appointment but was informed the Doctor was not available after 3:00 P. M.

Claimant then contacted the office of the Supervising Operator in Pittsburgh in an effort to obtain permission to be relieved from her duties for a day during the month of June. She was informed that the permission could not be granted for the reason that no extra block operators were available to relieve her. She then made arrangements to see the Company Doctor at Tarentum on June 24, 1963, one of her Monday rest days.

Regulation 4-O-1 of the Agreement between the parties reads as follows:

"REGULATION 4-O-1.

(a) A Group 2 employe who is required to report for re-examination shall be paid at the straight time rate for actual time lost; provided, however, that the Group 2 employe who loses time because of his failure to report for re-examination at the time at which he is properly notified to so report shall not be paid for time lost.

(b) No employe shall be required to report for re-examination on the relief days of his assignment."

Therefore, so far as the Carrier is able to anticipate the basis of the claim, the question to be answered by your Honorable Board is whether the Claimant is entitled to be compensated for having her periodic physical examination on a rest day when she had it within her power to take it without loss of time on other than a rest day.

(Exhibits not reproduced.)

OPINION OF BOARD: F. K. McCall who occupied the position of Block Operator with assigned hours 7:00 A. M. to 3:00 P. M. and rest days Sunday and Monday was scheduled to take her periodic physical examination sometime during the month of June 1963. She attempted to secure an appointment with the nearest company doctor at Tarentum, Pennsylvania, but failed to do so because she was informed that the doctor would not be available after 3:00 P. M. She then asked to be relieved from her duties for a day during the month of June to take the examination. Permission however was not granted because no Block Operators were available to relieve her. On Monday, June 24, 1963, one of her rest days, she went to the company medical examiner's office in East Brady, Pennsylvania for her examination.

Petitioner makes claim for eight (8) hours at straight time rate and four (4) hours at punitive rate for reporting for the physical examination on one of her rest days. To support her claim she cites Regulation 4-O-1 which states that no employe shall be required to report for re-examination on his relief day. In addition, Petitioner contends a violation of Article V, Paragraph (a) of the National Agreement because the Supervising Operator gave no reason for disallowance of the claim in the initial denial.

Carrier submits that it satisfied the requirements of Article V in a letter dated June 27, 1963. It also denies violation of Regulation 4-O-1 pointing out that no loss of time or wages was involved and that Claimant was not ordered to report for the physical examination on her relief day. It was her responsibility to make her own arrangements.

With respect to the contention that the claim is procedurally defective because of violation of Article V (a) of the August 21, 1954 National Agreement, we find the letter of June 27, 1963, disallowing the claim constituted compliance with this provision. The statement in the denial, "There is no basis for this claim and it is accordingly denied," is a sufficient reason for rejection of the request for payment for a re-examination on a rest day. This denial indicates no support for the claim in the Agreement.

In examining the request for compensation for reporting for the periodic examination on a rest day we note that although Claimant failed to secure an appointment after 3:00 P. M. with a company doctor at Tarentum, a medical examiner of Carrier was on duty at East Brady between 3:00 P. M. and 5:00 P. M. His office was within twenty miles from her work location and could be reached after her work day. The record does not show that she made an attempt to arrange for an appointment between 3:00 P. M. and 5:00 P. M. after her tour of duty on Tuesday through Friday. Instead she chose to use a rest day to see the company doctor at East Brady. Claimant was not required to report for an examination on her rest day, and hence there was no violation of Paragraph (b) of Regulation 4-O-1. Furthermore the provision in Paragraph (a) of Regulation 4-O-1 that the employe who is required to report for re-examination is to

be paid for actual time lost can not be used to support this claim because actual work time was not lost.

For the foregoing reasons we hold that the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.