Award No. 6228
Docket No. 6039
2-IC-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the Carrier refused to pay Electrician W. W. Floyd automobile mileage allowance due him for September 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1969.

2. That accordingly, the Carrier be ordered to pay Electrician W. W. Floyd the 900 miles at the nine and one-half (9½) cents allowance for the use of his personal car, totaling $85.50 due him for this violation.

EMPLOYES' STATEMENT OF FACTS: The Carrier, on August 1, 1969, posted a bulletin for a vacation relief position with headquarters at Clinton, Illinois.

The Carrier, on August 11, 1969, posted a bulletin assigning the Claimant to this relief position.

The claimant had to relieve a position at Champaign, Illinois, which is forty-five miles from his headquarters point, which is Clinton, Illinois. The carrier did not furnish him with transportation. He, therefore, had to use his own car to make the round trip each day so that he could relieve the position at Champaign. This amounted to ninety (90) miles each day for ten (10) days. The claimant, on September 15, 1969, submitted a request on the carrier's Form 1325 for this mileage allowance due him. It was returned to him with a note stating that there is no provision to pay mileage to handle work held by seniority and choice. This note had Master Mechanic H. L. Harrell's initials on it.

On September 25, 1969, we notified Master Mechanic Harrell that we could not accept his denial of the claim for mileage allowance due the claimant.

On September 25, 1969, we appealed the decision denying the claim to Mr. W. J. Cassin, Director of Labor Relations.

Second, the company has shown that the union has not sustained its burden of proof.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is asking this Board to order Carrier to pay him automobile mileage at the rate of 9½ cents per mile for 900 miles, or an amount of $85.50 for driving his own personal automobile from Clinton, Illinois to Champaign, Illinois, 90 miles each day on the dates in question.

Claimant is relying on Article 12 of the Vacation Agreement, providing, in part:

> "* * * However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employe on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules."

Claimant is also banking on Referee Wayne L. Morse's interpretation to the December 17, 1941 Vacation Agreement that if the existing rules agreement provides for deadhead pay and transfer allowances for relief work, such pay and allowances must be paid in connection with vacation reliefs.

Claimant's position is that inasmuch as he was sent from his Clinton headquarters point to relieve an electrician on vacation at the Champaign headquarters, he is entitled to compensation in accordance with existing regular relief rules; that Rule (1) (4) (d) (3) of the Agreement provides as follows:

> "(d) Employes assigned to regular rest day relief service who are required to travel from one seniority point to another shall be paid travel time hereinafter provided:
>
> (3) Where an employe is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located, the carrier will either provide transportation without charge or reimburse the employe for such transportation cost. ('Transportation' means travel by rail, bus or private automobile and 'transportation cost' means the established passenger fare or automobile mileage allowance where automobile is used.)"

Claimant contends that by virtue of said Rule (1) (4) (d) (3), quoted above, he is entitled to automobile mileage inasmuch as he held a vacation

relief position with headquarters at Clinton, Illinois, another city, and return using his own automobile.

Carrier challenges this claim by contending that there is no rule in the Agreement that provides 9½ cents per mile for traveling for employes exercising seniority to a position that includes vacation relief; that Rule (1) (4) (7) of the Agreement is limited and confined by Rule (1) (4) (d) (7) of the Agreement, which provides as follows:

> "(7) It is understood that this rule applies only to regular rest day relief assignment, and does not change or modify the application of other travel time rules in this agreement."

Carrier argues that it is undisputed that Claimant was performing vacation relief — not rest day relief under the 40 hour work week rule; that Rule 12 applies only to emergency road work; that Article 12(a) and Referee Morse's interpretation of that article both refer to "relief workers" but not to the specifically worded phrase "regular rest day relief" workers as does Rule 1 of the Agreement; that Claimant was not a regular relief worker, and Article 12(a) does not apply to the present circumstances; that Rule 1 is not a regular relief rule; that Rule (1) (4) (d) (7) is specific in that it permits travel reimbursement only to those employes on "regular rest day relief assignment", and should not be expanded to cover "vacation relief" assignments as contemplated by the more general Article 12(a) of the National Vacation Agreement; that the Organization understands that the claim is without merit and this is shown by its General Chairman's letter of May 21, 1970 to Carrier, in which it was stated that Carrier allow the claim on an unprecedented basis with the understanding that it not be cited, by either party, in connection with any future cases, and that a Memorandum Agreement be negotiated to cover such situations; that the Organization has failed to sustain its burden of proof.

While it is true, as the Carrier contends, that Rule 1 (4) (d) refers to Regular Relief Assignment and not to vacation assignment, nevertheless, Article 12(a) of the December 17, 1941 National Vacation Agreement, governing the parties to this dispute, is clear and explicit in requiring that if a relief worker necessarily is put to substantial extra expense over and above that which the regular employe on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.

Referee Wayne L. Morse, in his interpretation to said Rule 12(a), said:

> "It, obviously, would not be fair to apply the benefits of a relief rule in the case where an employe relieves a fellow employe who is ill or off duty for some reason other than the taking of a vacation, but to deny him the benefits of the same rule if he happens to relieve an employe who is on vacation."

The record in this instance shows that Claimant was performing vacation relief. Under the terms of Article 12(a) of said National Vacation Agreement, Claimant is entitled to any substantial extra expense which he had to incur over and above the expense that the regular employe would incur, and Claimant is eligible for compensation in accordance with the relief rules.

We look to the relief rules of the Agreement, if any, to see if Claimant is entitled to such additional compensation as requested herein. Rule 1, 4, d, (3) of the Agreement provides that where an employe is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located (Claimant did travel outside his headquarters point on the dates in question), Carrier will either provide transportation without charge or reimburse the employe for such transportation cost. Said rule defines "Transportation" to mean travel by rail, bus or private automobile, and defines "transportation cost" to mean the established passenger fare or automobile mileage allowance where automobile is used.

Therefore, Claimant is entitled to the established automobile mileage allowance in this instance at the time of the use of his said automobile on the dates in question.

AWARD

Claim sustained in accordance with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1971.

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