

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Electrical Workers)
 { Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Carrier violated the terms of the current agreement when it failed to reimburse Communication Crew Cable Splicer E. F. Suckert as specified in schedule rules for the entire amount of expenses which he incurred while performing service for the Carrier during the month of June 1971.
2. That accordingly the Carrier be ordered to compensate the aforementioned employee in the amount of \$18.50.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The central question to be determined in this dispute is whether, under the provisions of Rule 40 of the Agreement, Carrier is required to provide free transportation to Claimant even though rail transportation between the two points in question was provided by AMTRAK and not the Carrier on the claim dates in question.

Rule 40 provides:

"Employees covered by this agreement and those depending upon them for support will be given the same consideration in issuing free transportation as is granted other employees in the service. Transportation will be furnished crew men if it is possible for them to go home for their rest days."

The Carrier takes the position that Rule 40 was intended to provide transportation on Carrier facilities if and when such facilities were available and under its control. Since it did not provide passenger service between Fargo, North Dakota and Minneapolis, Minnesota on the claim dates in question, Carrier asserts that there was no obligation to reimburse.

The Organization contends that the second sentence of Rule 40 ("Transportation will be furnished crew men if it is possible for them to go home for their rest days.") is a mandatory requirement on the part of Carrier under any circumstance and irrespective of whether Carrier operates passenger service between the two points involved.

The Board does not agree with Organization's contention. Rule 40 must be read and construed in its totality. Basic to the providing of free transportation under Rule 40 is the availability of such transportation by Carrier. Such availability encompasses crews going home on their rest days. Inasmuch as AMTRAK had control of the passenger service between Fargo and Minneapolis, free transportation was not available under the control and auspices of Carrier. See Third Division Awards No. 12351, 16745, 18152, 18861, 19138; and unnumbered award of P.L. Board No. 970.

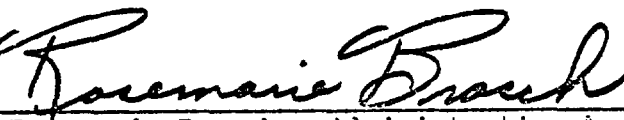
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.