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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6607
Docket No. 6395
2-AT&SF-SM-'73

The Second Division consisted of the regular members and in addition Referee Edmund W. Schedler when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(The Atchison, Topeka and Santa Fe Railway Company
(-Eastern Lines-

Dispute: Claim of Employes:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the current agreement when they failed to compensate Sheet Metal Workers J. A. Nelson, R. F. McIntyre and W. T. Ross for transportation expense.

2. That accordingly the carrier be ordered to compensate Sheet Metal Workers J. A. Nelson, R. F. McIntyre and W. T. Ross in the amount of ($15.20), ($7.48) and ($15.14) respectively.

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.

This grievance involved the question of whether or not the Carrier is contractually required to reimburse employees, who are working away from their home station, their transportation costs to return home on weekends. There were 3 separate claims presented; the 3 claims involved identical merits, and the parties agreed the 3 claims would be disposed of in one award.

Claimants had a headquarters point of Newton, Kansas and were assigned, at various times, to work in LaJunta, Colorado. When there was no work assigned on their rest days they returned to their headquarters point, and they returned "on time for work" at LaJunta when their next work day began. The relevant provisions of the Agreement were:

The Carrier cited numerous awards to support their position. This award will dispose of the logic presented by those awards.

In Public Law Board 970 the relevant language stated:

"When the majority of the employees in a crew elect, and conditions permit, they may make week-end trips to their homes.... When such trips are made, free transportation will be furnished."

This award cited award 19138 and denied the claim.

In Award 19138 the relevant language of the Agreement stated:

"When such trips are made, free transportation will be furnished."

In 19138 the Board was not persuaded that the presence or absence of the words "consistent with regulations" were germane to the proper interpretation of the rule and the Board followed the line of cases previously decided.

In Award 16745 the relevant language stated:

"Free transportation will be furnished consistent with regulations."

This award went along with the logic of awards 2786 and 12351 and held that there was nothing in the rule that required the Carrier to use other than the Carrier's trains.

Basically the awards cited by the Carrier rely upon the interpretations of Awards 12351 and 2786. In Award 12351 the relevant language was in rule 26(a), to wit:

"Rule 26. Week-End Trips

(a) Employes assigned to camp cars will be free to make weekend trips to their homes when requirements of the service will permit. Free transportation consistent with regulations will be furnished. When camp cars are located at points where passenger trains are not stopped, motor cars or Company-owned trucks, if available, may be used to get employes to points where trains do stop, provided the employes will cooperate and this is satisfactory to a majority of the employes in a gang."

The Board noted in the award 12351 that the critical sentence was followed by additional language that made it clear that the free transportation was that transportation available on the Company's trains because a method was provided to take employees to stations where passenger trains stopped. No such qualifying language appears in the instant grievance.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of December, 1973.

In arriving at such an unreasonable conclusion, the referee demonstrated convincingly that he did not understand the principle underlying the central rule involved; the long standing practice thereunder; and the sound, well-reasoned precedent awards which were rendered by competent and able referees who denied all similar cases which were progressed to this Board.

In his Award the referee stated:

> "* * *For past 48 to 50 years monthly-rated employees assigned to road work were allowed free transportation home on weekends on the Carrier's trains in accordance with the Carrier's rules and regulations. * *."
>
> "* * *It was conclusively shown in the submission that for many years the 'free transportation provided' was transportation on the Carrier's trains. It appears that since the Carrier was required to provide free transportation that such free transportation flowed naturally to the Carrier's trains."
>
> (Underlining ours)

Based on the foregoing, up to this point the referee was obviously aware of and understood that the only "free transportation" referred to in Rule 14(f) was on Carrier owned and operated trains.

The referee having established the foregoing stated:

> "***it was also undisputed that the Carrier discontinued all passenger train service on May 1, 1971 when passenger operations became the responsibility of the National Railroad Passenger Corporation* * *."

In other words, the referee agreed that the Santa Fe (Carrier in case) no longer had any control over passenger trains operating over its tracks. It was at this point that the referee should have followed the sound principle that a Carrier is only free to grant that which is within its control to grant its employes - such principle being laid down by this Board in sound precedent awards of the Third Division, i.e. 2786, 12351, 16745, 19138; Public Law Board 970 (BRS v. Milwaukee Road), and Second Division Award No. 6588.

The referee, in referring to Award No. 6588, further compounded his basic error in sustaining this claim when he stated:

> "* * *The word 'granted' was used and it is clear that the Carrier was 'giving' transportation to the individuals involved. <u>In the instant grievance (Docket 6395) there was nothing to show the Carrier was 'giving' away free transportation in Rule 14(f)."</u> (Underlining ours).

In this respect the referee was correct and he should have denied the claim instead of bringing his own distorted brand of industrial justice to this Board based on what he mistakenly stated was a "quid pro quo" within Rule 14(f).

The record in this case clearly revealed that at no time had the carrier ever paid "personal expenses . . . at the home station" and the employees completely failed to show otherwise. Therefore, to hold that since claimants were not entitled to personal expenses while at home station during the weekend they were entitled to free transportation, or rather reimbursement for same on a passenger train not owned or controlled by Carrier, thoroughly defies sound logic as well as the able reasoning in the precedent denial awards previously cited herein.

Since the award is so patently erroneous and in such complete discord with the sound well-reasoned precedential awards previously referred to herein it becomes a "maverick" award and is of absolutely no value relative to precedent.

For the foregoing reasons we dissent.

H. B. Jones

H. F. M. Braidwood

P. C. Carter

J. M. Youhn

E. T. Horsley