

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

GULF COAST LINES

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the Collector at Corpus Christi, Texas, be paid a minimum of one dollar per day for the use of his automobile."

EMPLOYES' STATEMENT OF FACTS: "The carrier requires the Collector at Corpus Christi to furnish and use his own privately owned automobile in the performance of his duties, which makes it possible for one Collector to perform approximately twice the work he performed before being required to furnish and use his own automobile."

"The carrier and the Brotherhood have agreed that the Collector be paid 5¢ per mile for using his automobile, but we have been unable to agree upon a minimum payment."

POSITION OF EMPLOYES: "The employees quote paragraph (b) of Rule 62 of our current agreement in support of this claim:

'Rule 62. Machines, Equipment, and Supplies Furnished.

* * *

'(b) Whenever and wherever employees are required to use an automobile, motorcycle, or bicycle in the rendition of service they will be instructed in writing by the proper officer, and an equitable allowance for the use of such equipment will be agreed upon by the Carrier and Organization.'

"The above rule places a responsibility upon both the carrier and the Brotherhood to agree upon 'an equitable allowance for the use of such equipment.'

"The carrier and the Brotherhood agreed that five cents per mile be paid the Collector, but the Brotherhood insisted that a minimum of one dollar per day be established.

"We insisted that it would not be an 'equitable allowance' to require the Collector to furnish, maintain and have available an automobile, representing an investment of several hundred dollars, with no assurance that he would be paid anything. We pointed out to the carrier that, unless a minimum was established, it would be possible for the carrier to require an employee to invest several hundred dollars in purchasing an automobile that would be used only one or two miles a day, for which the employee would receive the magnificent sum of five or ten cents per day.

"It would also be possible to require such employee to have his automobile available for use if, as and when it might be needed. Certainly that could not be considered as 'an equitable allowance.'

"The employees are convinced that 'an equitable allowance,' as comprehended in Rule 62, requires that an employee be assured a minimum of not less than one dollar per day, and that 'an equitable allowance' is not made unless the employee has some assurance of such a minimum allowance when he is required to invest several hundred dollars in an automobile for the use of the carrier, with the employee paying all operating cost.

"Your Honorable Board is requested to sustain our claim."

CARRIER'S STATEMENT OF FACTS: "It is necessary for the Collector at Corpus Christi to use an automobile in the performance of his duties. He furnishes his own automobile for which the Carrier agreed with General Chairman of the Clerks' Organization to an allowance of 5¢ per mile, however, the General Chairman insisted that a minimum payment or guarantee of \$1.00 per day be allowed, to which the Carrier would not agree, inasmuch as the allowance of 5¢ per mile is considered equitable and will reimburse the employee for the use of his automobile."

POSITION OF CARRIER: "Rule 62 (b) of current Agreement with Clerks' Organization reads as follows:

'(b) Whenever and wherever employees are required to use an automobile, motorcycle, or bicycle in the rendition of service they will be instructed in writing by the proper officer, and an equitable allowance for the use of such equipment will be agreed upon by the Carrier and Organization.'

"It is the contention of the Carrier that under the above quoted rule the allowance for the use of an employee's automobile, motorcycle or bicycle is subject to negotiation between the parties to the Agreement and that your Honorable Board has no jurisdiction of the case."

OPINION OF BOARD: The claimant is a collector for the carrier whose duties require him to use his own automobile in carrying on his work. Rule 62 b of the current agreement which became effective November 1, 1940 contemplates that in certain cases use will be made of automobiles owned by employees and that compensation will be paid therefor by the carrier. The rule reads as follows:

"Rule 62. Machines, Equipment, and Supplies Furnished.

'(b) Whenever and wherever employees are required to use an automobile, motorcycle, or bicycle in the rendition of service they will be instructed in writing by the proper officer, and an equitable allowance for the use of such equipment will be agreed upon by the Carrier and Organization.'"

The parties have apparently agreed on a rate of five cents per mile but the employee asserts that there should be a minimum fixed of \$1.00 per day.

A supposititious case is posed, where an employe might be required to furnish an automobile and without such guarantee of a minimum might get but five or ten cents a day for the use of his car. But that is not this case. So far as this employe is concerned, there is nothing to show that he has not been consistently paid at least the minimum which he claims should be established.

It is apparent, therefore, that what this board is asked to do is to frame a rule which may apply to situations which may arise in the future not only with respect to this employe but with respect to all others similarly situated. It has been repeatedly held that this board has no authority to make rules. Its function is to interpret them and apply them to the facts of particular cases.

Had this employe presented facts showing that, due to the failure of the parties to agree on an equitable allowance for the use of his car, he had not been properly compensated, this board might well determine what should be allowed under such specific facts. But this claimant presents nothing to indicate that he himself has not been properly compensated.

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 employes 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, in so far as it may relate to an alleged failure by the carrier to make an equitable allowance for the use of this employe's automobile;

That there is no evidence to indicate that this claimant has not been properly compensated;

That this Board has no jurisdiction to establish a rule with respect to compensation for the use of an automobile by an employe.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1942.