

Award No. 5704
Docket No. CL-5726

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the Clerks' Agreement:

1. When it failed to compensate Mrs. Z. H. Carbaugh, Chief Clerk to Assistant Superintendent, Illmo, Missouri, for travel time and waiting time when she was required to make stenographic records of formal investigations, and

2. That Mrs. Z. H. Carbaugh be compensated for travel time and waiting time, in addition to her regular compensation, for time spent in traveling and waiting when she was required by the Carrier to perform the duties of a stenographer covering formal investigations in Paragould, Arkansas, on Sunday, September 18, 1949, in East St. Louis, Illinois, on Wednesday, March 1, 1950, in East St. Louis, Illinois, on Friday, September 15, 1950, in East St. Louis, Illinois, on Saturday, February 17, 1951, in Paragould, Arkansas, on Sunday, February 25, 1951 and for all subsequent dates until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Z. H. Carbaugh, employed with the carrier as Chief Clerk, Assistant Superintendent, Illmo, Missouri, occupies a position listed under Exception "C" of Scope Rule 1-2 of current Clerks' Agreement effective April 1, 1946, with Saturday and Sunday as rest days. This Agreement is on file with your Honorable Board and is hereby made a part of the submission. This Agreement provides that positions listed under Exception "C" of the Scope Rule shall not be subject to Rule 4, Promotion, Assignments and Displacements, Rule 32, Overtime and Calls, and Rule 33, Sunday and Holiday Work.

On January 5, 1950, an Agreement was reached providing that effective September 1, 1949, the Chief Clerk to Assistant Superintendent, Illmo, Missouri, would receive a monthly rate of \$311.12. This monthly rate was compensation for a basic month of 169 $\frac{1}{2}$ hours and for service rendered on rest days and holidays to the extent of, but not exceeding twelve (12) hours per month. Service outside of assigned working hours and/or in excess of twelve (12) hours per month on rest days and/or holidays will be paid for under applicable overtime rules. (Employes' Exhibit "A".)

the duties of the position, including necessary traveling and were paid a monthly rate to compensate for all services rendered. It was never contended by the Organization that employees assigned to Exception C positions were due additional payments under Rule 36-1 prior to September 1, 1949. Under the circumstances, it seems apparent that the Employees also considered such employees were regularly assigned to road service prior to September 1, 1949, and by reason thereof were excepted from the pay provisions of Rule 36-1 on the basis of the exception contained within the rule.

Rule 36-1 which provides certain payments to employees not regularly assigned to road service and which did not require additional payments to employees filling Exception C positions for road service prior to September 1, 1949, has not been revised to provide for such payments subsequent to September 1, 1949.

In view of Decision No. 8 of the Forty-Hour Week Committee setting forth the intent and meaning of the sixth paragraph of Article II, Section 2(b) of the March 19, 1949 Agreement and defining the phrase "regularly assigned to road service" as meaning the same thing on this property now that it did prior to September 1, 1949, the rules in effect prior to September 1, 1949, and the established application thereof show that the pay provisions of travel time Rule 36-1 were not applicable to employees filling Exception C and D positions.

Under the circumstances, it is the Carrier's position that rules providing for traveling time and starting time shall apply only to the extent that these rules were applicable prior to September 1, 1949, as set forth in the Forty-Hour Week Agreement and subsequently decided by the Forty-Hour Week Committee in its Decision No. 8 dated Chicago, January 10, 1950.

As pointed out above, the claim is not supported by schedule rules and is not valid for any reason. The Carrier respectfully requests it be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is made in behalf of Mrs. Z. H. Carbaugh, Chief Clerk to the Assistant Superintendent at Illmo, Missouri. The Brotherhood asks that she be paid for travel and waiting time, in addition to her regular compensation, for time spent in traveling and waiting when, on five different occasions, she was required to attend and report investigations away from her home headquarters at Illmo. The claim is also for any subsequent dates when her duties have been so required. The first date for which claim is made is September 18, 1949, or subsequent to September 1, 1949.

The position of Chief Clerk to the Assistant Superintendent at Illmo, Missouri, is subject to Rule 36-1 of the parties' Agreement and has been at all times since claimant was assigned thereto on May 24, 1948.

Rule 36-1 is as follows:

"Temporary or Emergency Travel Service

36-1. Employees not regularly assigned to road service who are temporarily required to perform service away from their headquarters, which necessitates their traveling, will be allowed their regular rate for assigned hours while working, traveling or waiting, overtime rate for time worked outside of assigned hours, and necessary expenses while away from their headquarters. Time spent in traveling or waiting to and from the temporary assignment outside of regular assigned hours will be paid for at the pro rata rate,

except that no time will be paid for traveling between the hours of 10:00 P. M. and 7:00 A. M. where lodging is provided by the railroad. Where meals and lodging are provided for by the railroad, actual expense will be paid to employees when away from home station under this rule."

The question therefore is, did it have application thereto? If it did, then the sixth paragraph of Article II, Section 2 (b) of the National Forty-Hour Week Agreement, now, by Memorandum Agreement of the parties, Rule 35-4 of the parties' Agreement effective as of September 1, 1949, and Decision 8 of the Forty Hour Week Committee are not material for they have not changed it. The import thereof is that no change in the application of the Rule relating to traveling time should result therefrom.

Prior to September 1, 1949, the occupant of the position of Chief Clerk to the Assistant Superintendent at Illmo, Missouri, was never paid other than the monthly salary established for the position, although required to travel away from the home headquarters to attend investigations for the purpose of reporting the proceedings. This was because the salary covered all services which the occupant of the position was required to perform during the month. Also, no claims were ever made for the occupant of the position under Rule 36-1 prior to September 1, 1949. Carrier cites this fact to show that Rule 36-1 is not applicable to the position. We do not think that is true. Apparently, because of the salary basis on which the occupant of the position was paid prior to September 1, 1949, no beneficial advantage would result to the occupant thereof even though Rule 36-1 had application to the position. This would apparently explain why no claims were made prior to September 1, 1949. However, effective September 1, 1949, a change was made as to the basis of pay for this position and if Rule 36-1 is applicable to the position it would, since such change, be beneficial to the occupant thereof.

Carrier contends, because the occupant of the position of Chief Clerk to the Assistant Superintendent at Illmo is occasionally required to leave the home headquarters of that position to attend investigations and make a report thereof, that to the extent the occupant is required to travel for that purpose the occupant is regularly assigned to road service within the meaning of Rule 36-1.

As stated in Award 5488 of this Division: "It says, in substance, 'Employees * * * not regularly assigned to road service,' thus distinguishing between those in road service and those employees who are not; again reading, 'who are temporarily required to perform service away from their headquarters, * * *.' We think the Rule means that unless employees are assigned to road service with some degree of regularity the Rule is applicable to them when they are temporarily required to perform service away from their headquarters which necessitates traveling.

As evidenced by the claim, occasions requiring the claimant to travel to attend investigations are few and very irregular. We find Rule 36-1 to be applicable to the position here involved and claimant, on the occasions set out in the claim and on all subsequent occasions of like nature, should be paid in accordance with the provisions thereof.

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

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Carrier has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of April, 1952.