

Award No. 6366
Docket No. TE-6203

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
WABASH RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad Company that—

(a) The Carrier has violated and continues to violate the provisions of the agreement between the parties when it refuses to allow mileage payment in lieu of free transportation to relief employes as prescribed in the Memorandum of Agreement herewith quoted:

"MEMORANDUM OF AGREEMENT

Between The

WABASH RAILROAD COMPANY

and the

Employes Thereof

Represented by

THE ORDER OF RAILROAD TELEGRAPHERS

It is mutually understood and agreed that—

1. In the application of that part of Rule 7, Section 1, paragraph (e) of the Agreement effective November 1, 1946, as revised by Memorandum of Agreement effective September 1, 1949, reading as follows:

'Free transportation for necessary travel in providing relief will be made available to relief employes.'

the Management will designate by bulletin one (1) of the offices included in relief assignments as the headquarters of the incumbent of such assignments.

2. Employes filling regular relief assignments that include positions outside of one city will be furnished free transportation for nec-

essary trips to and from the outside points or the equivalent in the form of reimbursement therefor as follows:

(a) free rail transportation (either passenger or freight), if available.

(b) if reasonable rail transportation is not available the relief employes may elect to use available bus transportation.

(c) if neither reasonable rail nor bus transportation is available relief employes may use a private automobile, in which case the Carrier will pay mileage at the rate of five (5) cents per mile for the actual highway mileage necessary in traveling between the designated headquarters and each of the other positions included in the relief assignment.

(d) if relief employes choose to use their automobile in lieu of bus transportation they will be allowed an amount equivalent to the bus fare.

(e) intra-city transportation will not be paid for.

3. In instances where bus transportation or private automobile is used the relief employe shall submit to his Superintendent for payment at the end of each calendar month itemized statement showing bus fares paid or accrued automobile mileage. Statements covering bus fares paid will have attached thereto, if possible, tickets or cash fare receipts.

Upon presentation and verification of itemized claims for bus fare paid or automobile mileage accrued, as soon thereafter as practicable, the Carrier will reimburse relief employes for bus fares paid and automobile mileage accrued.

4. The word 'reasonable' as used herein means the transportation afforded will permit the relief employe to reach the relief location not more than two (2) hours in advance of the starting time or to leave such location not later than two (2) hours after quitting time.

5. This Memorandum of Agreement supersedes the Memorandum of Agreement effective August 16, 1947, and shall become effective on September 1, 1949, and continue in force thereafter subject to the provisions of the Railway Labor Act, as amended.

ACCEPTED FOR THE ORDER OF
RAILROAD TELEGRAPHERS:

By /s/ B. W. Lidgard
Chairman - General Committee

ACCEPTED FOR THE WABASH
RAILROAD COMPANY:

By /s/ G. H. Sido
Vice-President and General
Manager."

and

(b) the Carrier shall now be required to compensate the employes named herein, N. C. Been, C. G. Krouse, H. H. Haselby, R. Freidenberger, L. Fain, W. E. Linna, for the month of June 1950 for the difference between the amount allowed and the amount claimed account necessary traveling in filling relief positions on each day such positions away from headquarters were filled; and

(c) in months subsequent to June, 1950, the Carrier shall allow and pay the above named occupants of relief positions who use their private automobiles in necessary traveling to perform service on relief

positions away from their headquarters on the basis of one round trip between headquarters and the location of the relief position if such usage be covered by paragraph (c) of the quoted Memorandum of Agreement; and

(d) any and all other employees of the Carrier who have, in like manner to the above claimants, been deprived of mileage payments due under the herein quoted agreement shall be made whole by the Carrier.

EMPLOYEES' STATEMENT OF FACTS: An agreement effective November 1, 1946 amended as to certain rules in accordance with the Forty Hour Week Agreement of March 1949 and as to the memorandum quoted in the claim here presented, also revised as to rates of pay variously since November 1, 1946, exists between the parties.

As to the employees listed in paragraph (b) of the Statement of Claim, the facts and specific amount of mileage claimed in accordance with the Memorandum above quoted follows:

N. C. Been: This employee occupied relief position No. 17. Headquarters—Clymers.

Worked as follows

Saturday	7:00 a.m. to 3:00 p.m.	Clymers
Sunday	7:00 a.m. to 3:00 p.m.	Logansport
Monday	7:00 a.m. to 3:00 p.m.	Logansport
Tuesday	3:00 p.m. to 11:00 p.m.	Clymers
Wednesday	3:00 p.m. to 11:00 p.m.	Clymers
Thursday	Assigned Rest Day	
Friday	Assigned Rest Day	

Highway mileage from Clymers to Logansport 5 miles one way, 10 miles round trip. Account no reasonable means of transportation between the two points otherwise, the employee did, in accordance with the Memorandum, paragraph 2 (c), use his privately owned automobile as a means of transportation for the necessary travel Clymers to Logansport and return each Sunday and Monday in June 1950 and thereafter, claiming round trip mileage payment of 10 miles each day, or a total of 80 miles for the month. The Carrier reduced the mileage to 40 miles and paid claimant for only 40 miles. From September 1, 1949 until June 1, 1950, mileage payment was made to claimant on basis of claim here filed, namely round trip for each mile actually traveled on both of the two days. See Exhibit 1 and 2.

C. G. Krouse: This employee occupied relief position No. 6. Headquarters—Adrian.

Worked as follows:

Sunday	4:30 a.m. to 12:30 p.m.	Adrian
Monday	4:30 a.m. to 12:30 p.m.	Adrian
Tuesday	3:00 p.m. to 11:00 p.m.	Alvordton
Wednesday	3:00 p.m. to 11:00 p.m.	Alvordton
Thursday	2:00 p.m. to 10:00 p.m.	Adrian
Friday	Assigned rest day	
Saturday	Assigned rest day	

With respect to paragraph (b) of the Committee's ex parte Statement of Claim. The Claimants have been paid mileage allowance, pursuant and in accordance with the terms of the Memorandum of Agreement in effect, for the use of private automobiles for necessary travel between the designated headquarters of their assignment and the positions included in that assignment, both during the month of June 1950, and the months subsequent thereto.

As stated in the Carrier's Statement of Facts, the individuals named in paragraph (b) of the Committee's ex parte Statement of Claim made claim for the payment of highway mileage allowance for one round trip between their headquarters and the away from headquarters point on each date they performed relief service at the away from headquarters points.

The Carrier did not require the Claimants to return to their headquarters point at the end of each day's work at an away from headquarters point, and any trips between the away from headquarters point and the headquarters point at the end of the first day's work at the away from headquarters point on the assignments occupied by the named Claimants, and any trips from the headquarters point to the away from headquarters point as a result of the relief employee, of his own volition, returning to his headquarters point after the conclusion of his first days work at the away from home terminal point, was likewise not required by the Carrier. Each such intervening trip was made by the relief employee involved, of his own volition, and was not "necessary travel in providing relief" and the mileage thus traveled on such intervening trips was not a part of "the actual highway mileage necessary in traveling between the designated headquarters and each of the other positions included in the relief assignment."

With respect to paragraph (c) of the Committee's ex parte Statement of Claim. As stated in the Carrier's Statement of Facts, the claimants named in paragraph (b) of the Committee's ex parte Statement of Claim have been paid mileage allowance for the authorized use of private automobiles in necessary travel to perform relief service on the relief assignments occupied by them on the basis of one round trip between the headquarters of their relief assignment and the away from headquarters point, which we understand to be exactly what the Committee has claimed, in paragraph (c) of its ex parte Statement of Claim, that such employees should be allowed.

With respect to paragraph (d) of the Committee's ex parte Statement of Claim. The alleged claim set forth in paragraph (d) of the Committee's ex parte Statement of Claim is vague and indefinite in that no individuals are named, neither are any specific dates referred to.

Paragraph (d) of the Committee's ex parte Statement of Claim should be dismissed by reason of the fact that it is indefinite and general to the point of being hypothetical, and is a claim on which this Board is not capable of rendering a final and binding award, susceptible to application of enforcement, without reference to matters not stated in the Committee's ex parte Statement of Claim, matters the nature of which this Carrier is unaware of, and matters which are not before this Board in a manner or condition such as to permit this Board to give consideration to the facts in connection therewith and arrive at a determination with respect to the merits thereof based on provisions of the Agreements between the parties as applied to facts incident to those matters.

In so far as the representatives of the Carrier are aware, all employees occupying regular relief assignments have been paid mileage allowance for the use of private automobiles for necessary travel in providing relief service pursuant to and in accordance with the terms of the Memorandum of Agreement quoted in paragraph (a) of the Committee's ex parte Statement of Claim.

The alleged claim set up in the Committee's ex parte Statement of Claim is without foundation under the rules of the Agreement in effect between the representatives of the parties and should, in all respects, be denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

Oral hearing is desired.

OPINION OF BOARD: In our Award No. 4305 we held that the phrase, "necessary travel in providing relief," encompassed a round trip from headquarters to an outside point and return each day service was required at the outside point where expense allowance at the outside point is banned by the agreement. No sound reason to overrule that award appears so we decline to enter a conflicting award.

Since it appears that on the property the Carrier requested a specification of the claims encompassed by part (d) of the claim and offered to consider a standby agreement if such were done, we think part (d) must be denied,

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 Employees involved in this dispute are respectively Carrier and Employees 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 the agreement was violated.

AWARD

Parts (a), (b) and (c) of the claim sustained. Part (d) of the claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1953.