Award No. 12293
Docket No. TE-10448

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement when it failed and refused to reimburse Mr. J. H. Shipe for expenses incurred during the months of June and July, 1957, for the use of his private automobile while performing rest day relief service on the Coster-Clinton, Tennessee, rest day relief position.

2. Carrier shall reimburse J. H. Shipe, the regular occupant of the Coster-Clinton rest day relief position, at the rate of eight (8) cents per mile for 607 miles traveled during the months of June and July, 1957, on the aforementioned position. Total amount due $47.12.

3. Further, if Carrier continues the violation set forth above, then this claim is hereby made continuous and shall serve as claims for any future reimbursement for travel expenses incurred by the claimant while performing service on the aforementioned position. At the close of each month, claimant shall complete and file with the Carrier, Carrier's Form 1750-1, the designated form for claiming travel expenses, and the same shall be made a part hereof.

EMPLOYES' STATEMENT OF FACTS: J. H. Shipe is the regular assigned rest day relief employe on the Coster-Clinton rest day relief position designated headquarters at Coster, Tennessee. Claimant's assignment on this relief position is as follows:

Saturday	7 A.M. to	3 P.M.	– Agent-Telegrapher,	Coster, Tenn.
Sunday	7 A.M. to	3 P.M.	– Agent-Telegrapher,	Coster, Tenn.
Monday	3 P.M. to	11 P.M.	– Clerk-Telegrapher,	Coster, Tenn.
Tuesday	12 MN to	8 A.M.	– Clerk-Telegrapher,	Clinton, Tenn.
Wednesday	12 MN to	8 A.M.	– Clerk-Telegrapher,	Clinton, Tenn.

collective bargaining as outlined in the Railway Labor Act. The Board has heretofore held that it would not take such action.

In Third Division Award 6007, Referee Messmore, it was held:

"In determining the rights of the parties, it is our duty to interpret the applicable rules of the parties' agreement as they are written. It is not our privilege or right to add thereto. See Award 4435."

In Third Division Award 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them, as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

'The burden of establishing facts sufficient to require or permit *the allowance of a claim is upon him who seeks its allowance.*' See Awards 3523, 6018, 5040, 5976."

The Board, having heretofore recognized that it is without authority under the law to grant new rules or modify existing rules such as here demanded by the ORT, cannot do other than make a denial award of that part of the claim here in dispute.

CONCLUSION

Carrier has proven that there has not been any violation of the effective Telegraphers' Agreement and claim for pay at eight (8) cents a mile for 38 miles on June 5, 12, 19, 26 and July 3, 10, 24 and 31, 1957, is not supported by it, and that the point here at issue has heretofore been conceded by the ORT.

The Board, having heretofore recognized that it is without authority under the law by virtue of which it functions to grant new rules or modify existing rules as here demanded by the ORT, has no alternative but to hold that there has not been any violation of the effective Telegraphers' Agreement in evidence and that part of claim in dispute is not supported by it, and make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the interpretation of the term "necessary travel" as used by the parties, particularly as to whether it embraces daily travel by a relief telegrapher from his home station to relief station and return. The Carrier concedes its obligation to pay such travel once in each direction, but denies that it is "necessary travel" when the relief operator returns home each day during a relief stint of two or more days' duration.

Rule 4(e) of the effective agreement provides, in part:

* * * * *

"Regular relief assignments will be concentrated as much as practicable, consistent with train service and to avoid unnecessary travel. Free transportation for necessary travel in providing relief will be made available to relief employes. Employes who perform relief service under this rule shall not be paid expense allowance or for deadheading. Turnovers between regular and relief employes shall be without expense to the Carrier.

(NOTE: See Memorandum of Understanding, dated January 11, 1949, defining free transportation on page 43)."

* * * * *

The Memorandum of Understanding referred to defines "necessary travel" as used in Rule 4(e) as follows:

"(6) The term 'necessary travel' means such travel as is actually necessary to perform relief service when a relief employe's assignment changes from one station to another station in the assigned relief schedule."

The Petitioner urged that "necessary travel" be interpreted so as to include daily round trip travel by relief telegraphers on the authority of **Awards 4305** and **6366.** The fact situation in those cases differs from that of our case. There, the parties did not define "necessary travel" whereas in this case Section (6), supra, confines it to travel when a "relief employe's assignment changes from one station to another station." The meaning of this language was clearly understood by the parties and the record indicates that the Claimant had previously filed automobile mileage allowance forms asking reimbursement for only one round-trip, although he made trips back and forth each day.

Petitioner does not quarrel with the meaning of the language of Section (6), but has attacked it on other grounds. It argued that Section (6) was not meant to apply to Rule 4(e) because it was written on January 11, 1949, before Rule 4(e) was adopted on March 19, 1949. While the sequence of dates is correct, this argument overlooks the fact that the effective agreement reached on September 1, 1949, incorporates both Rule 4(e) and Section (6) and specifically calls attention to their relationship to each other by the parenthetical reference in Rule 4(e), quoted above. The Petitioner argued that this was done because on September 1, 1949, new rules governing travel had not yet been negotiated in accordance with Section 3(g) of the National Agreement of March 19, 1949, and therefore they were the only effective rules available at the time of the printing of the agreement. We reject this argument because it concedes that on September 1, 1949, Section (6) was applicable to Rule 4(e), and because, as will appear below, the Petitioner made no attempt to renegotiate travel rules, was not a party to the dispute between other Organizations and the Carriers on these rules, and made no protest concerning the Carrier's interpretation of the rules from 1949 until this and similar claims were filed in 1958.

The National Agreement of March 19, 1949, which established Rule 4—(The 40-Hour Week) provided as follows:

"Section 3(g), Existing rules governing travel time, waiting time, road work, deadheading and court attendance, will remain unchanged. However, the inauguration of the 40-hour week will require the cre-

ation of relief positions where none now exist. Appropriate rules to govern travel time for employes on such relief positions shall be negotiated by the representatives of the parties on the individual carriers."

When some of the parties to the National Agreement were unable to negotiate appropriate rules in accordance with Section 3(g), they submitted the dispute to arbitration. This resulted in Award No. 6 (Cole) which, the Petitioner urged, superseded Section (6) of the January 11, 1949 understanding, and established the rules governing travel on relief assignments. It argued that the Cole Award was a general award, and was, therefore, binding on all of the parties to the National Agreement.

The facts do not support this argument. Section 3(g) required that appropriate rules to govern travel time be negotiated by the representatives of the parties on the **individual carriers.** It is apparent that it was not intended that a single set of rules governing all Organizations and Carriers be negotiated, but rather that each individual Carrier would negotiate its own rules. Only those Organizations which were privy to the submission of the dispute can be deemed bound by the Cole Award. The Petitioner was not a party to it, and must be deemed to have elected to rest on the rules which then governed. The fallacy in the Petitioner's argument is the assumption that Section 3(g) required that **new** rules be negotiated, thereby raising the implication that the old rules were no longer applicable. Section 3(g), however, merely requires "appropriate" rules, which means such changes in existing rules as may be needed. It does not appear in the record that the Petitioner ever attempted to negotiate changes in the existing rules or to become a party to the dispute. The fact is that on January 11, 1949, shortly before Section 3(g) was agreed on, the Petitioner and Carrier had reached an understanding on rules governing travel on relief assignments. They made no further attempt to negotiate new rules when the National Agreement was promulgated.

The record indicates that on August 21, 1948, the Petitioner had proposed that relief travel be compensated for on a daily basis, but that the Carrier declined to adopt the proposed rule, and it was not included in the Memorandum of Understanding which the parties finally adopted on January 11, 1949.

If, as is now argued by the Petitioner, Award (6) had superseded Section (6), the Petitioner took no steps in more than eight years to make Award (6) applicable. Instead, the record indicates, the employes filed automobile travel allowance forms in accordance with the Carrier's interpretation of the rules.

We are driven to the conclusion that Section (6) was accepted by the parties as part of the rules governing relief travel.

Petitioner argued that Section (6) was unreasonable and that it was out of step with the rule prevailing on other properties. Such arguments, persuasive at the bargaining table, can have no place at this Board which has power to interpret and apply agreements, but not to rewrite them. See Award 6828.

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; and

That the Carrier did not violate the Agreement between the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1964.