

Award No. 12295
Docket No. TE-10497

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 C. E. McElhaney for expenses incurred during the months of May and June, 1957 for the use of his private automobile while performing service on the Lenoir City-Sweetwater rest day relief position.

2. Carrier shall reimburse C. E. McElhaney, the regular occupant of the Lenoir City-Sweetwater rest day relief position, at the rate of eight (8) cents per mile for 680 miles traveled during the months of May and June, 1957 on the aforementioned position. Total amount due \$54.40.

3. 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: C. E. McElhaney is the regularly assigned rest day relief employe on Lenoir City-Sweetwater rest day relief position. His designated headquarters are at Sweetwater, Tennessee. The relief assignment is scheduled to work as follows:

Lenoir City, Tenn.	Agt-Telegrapher	Saturday	8 AM to 5 PM
Lenoir City, Tenn.	Agt-Telegrapher	Sunday	8 AM to 5 PM
Sweetwater, Tenn.	Telegrapher-Clk	Monday	4 PM to 12 MN
Sweetwater, Tenn.	Telegrapher-Clk	Tuesday	4 PM to 12 MN
Sweetwater, Tenn.	Telegrapher-Clk	Wednesday	12 MN to 8 AM
REST DAYS		Thursday and Friday	

During the months of May and June, 1957, Claimant McElhaney was re-

ing the rules agreed upon by the parties. If inequities among employees 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 the limitations placed upon it by law, and the fact that it is without authority to grant new rules or modify existing rules such as here demanded by the ORT, has no alternative but to make a denial award of that part of the claim here in dispute.

CONCLUSION

Carrier has effectively proven that:

(1) The effective Telegraphers' Agreement was **not** violated and does **not** support that part of the claim here in dispute, i.e., for pay at 8 cents a mile for 20 miles on May 4, 5, 11, 12, 18, 19, 25, 26 and June 8, 9, 15, 16, 22, 23, 29 and 30 1957.

(2) The point here at issue has heretofore been conceded by the ORT.

(3) Claim is nothing more than a demand by the ORT that the Board establish a new rule or working condition by an award of the Adjustment Board.

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 the effective Telegraphers' Agreement has not been violated, that such agreement does not support the part of claim here in dispute, and make a denial award.

(Exhibits not reproduced).

OPINION OF BOARD: The issue here is identical with that disposed of in Award No. 12293, involving these same parties. That Award being controlling, the claim will 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 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.