

Award No. 12351

Docket No. SG-11831

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

In behalf of Mr. Louis E. Henning, Signal Helper, for reimbursement of the amount it cost him to use the Greyhound Bus service to and from his home on week-ends on account of no passenger trains being operated on that part of the railroad system between Louisville, Kentucky, and Evansville, Indiana, for all such expenses subsequent to the date of discontinuance of passenger trains on that part of the system. [Carrier's File: G-396-18, G-396, G-197, G-381]

EMPLOYES' STATEMENT OF FACTS: Under date of November 13, 1958, Mr. Louis E. Henning was assigned to a Signal Helper position on Signal Gang No. 17. Mr. Henning's home is at Irvington, Kentucky, which is located between Louisville, Kentucky, and Evansville, Indiana.

On or about November 15, 1958, the Carrier discontinued passenger train service between Louisville and Evansville. Since that time it has been necessary for Mr. Henning to commute via Southeastern Greyhound Lines in making week-end trips from where the gang is located to his home at Irvington. On some occasions, Mr. Henning was able to get a ride all or part of the way in private automobiles; and sometimes he was driven to the gang by his wife at the beginning of the work week, and she occasionally returned for him at the end of the work week. The distance from his home to the location of the gang when this claim was initiated was sixty-seven (67) miles, which necessitated a round trip of one hundred and thirty-four (134) miles. On the occasions when he was required to utilize the Greyhound Bus, he retained the bus ticket stubs.

Under date of December 19, 1958, Mr. G. L. Choate, Local Chairman, presented the following claim to Mr. E. S. Williams, Signal Supervisor:

"Please refer to job bulletin Sig. No. 52-58 dated November 13, 1958 by which Mr. Louis E. Henning was assigned a Signal Helper's position in Division Signal Gang No. 17.

Carrier therefore submits that the provisions of the rules involved and the interpretative practice followed for many years shows conclusively that there is no contractual foundation for the employes' claim, for which reason same should be declined.

For the Division to hold otherwise would be tantamount to writing something into the rules which now does not exist.

OPINION OF BOARD: Louis E. Henning, the Claimant, lived at Irvington, Kentucky, at the time of the occurrences with which this claim is concerned. This is located between Louisville, Kentucky, and Evansville, Indiana.

On November 13, 1958, Mr. Henning was assigned as a Signal Helper with a gang located approximately sixty-seven miles from his home.

On or about November 15, 1958, the Carrier discontinued its passenger train service between Louisville and Evansville. It is undisputed that the Claimant travelled to and from his home at Irvington on week-ends, often using the Greyhound Bus Line for transportation. He now seeks restitution for his bus fares.

The determination of the question before us depends on what is meant by the statement in Rule 26: "Free transportation consistent with regulations will be furnished."

It is our conclusion, that the historical background of this proviso, the tests of internal consistency with other parts of the Agreement and the attitude which the parties jointly expressed towards it by their practices (so far as is ascertainable from the record),—all dictate a finding that the proviso is intended to assure employes free transportation on the Carrier's rail facilities when such are available; we find no obligation for subsidizing week-end transportation to home and return when other means are used.

We note that the critical sentence is followed by a statement which takes for granted that the transportation had in mind is that available on the Carrier's own passenger trains; it provides for a method whereby employes may be accommodated by Carrier services to make station connections when these employes are located along the Carrier's rails at points where passenger trains do not stop. Thus, the assumption is carried out that the free transportation referred to is that which is available on the Carrier's facilities.

The "regulations", on which the benefit is contingent, are most reasonably understood as referring to restrictions on the use of the Carrier's own trains.

The Petitioner itself states:

"... The 'regulations' refer to any Federal, State, or local regulations concerning the issuance or use of free transportation, or to the Carrier's own regulations which prohibit the use of passes on certain trains, or restrictions against stopping fast trains at out-of-the-way places."

We agree with this statement insofar as it refers to qualifications or limitations on the granting of rides on the Carrier's facilities. It has not been shown that the statement in the Rule could reasonably refer to regulations concerning restitution for costs in using other transportation,—or that the proviso has such a subject in mind all.

The past practices on this subject favor the Carrier's position. This Rule has been in the Agreement since 1927 and there is no showing by the Petitioner that it has ever received the Interpretation now urged on us by the Claimant. It is undisputed that passenger service has not been operated on sections of the line since 1950 and the Carrier's statement is unrefuted that no such claims have been made as the one now before us. The record further shows that at the time the claim was instituted, employes working on the same gang as the Claimant were furnishing their own transportation without claim for reimbursement or grievance for failure to receive it.

Note must be taken of the fact that during these on-going practices, Agreements were terminated and renewed with the same provision. This indicates that the Petitioner did not disagree with the Carrier's interpretation of the provision as expressed by the practices.

There appears from the foregoing facts a strong showing that there has been consistent and continuous acquiescence by action to the interpretation put on this proviso by the Carrier.

Facts close to those given us here appear in Award 2786. There the Claimant was not permitted to ride the Carrier's freight cars to get to his home over week-ends because of the Carrier's "regulations" against it. In that case — as here — the Carrier did not operate passenger service at that location.

The employe claimed the fare outlay which had been incurred by him in the use of transportation to and from home on an electric line. The applicable Agreement rule was essentially the same as the one before us, containing almost the identical sentence: "Free transportation will be furnished consistent with the regulations."

In that case, the Board found against the Claimant and in favor of the Carrier's interpretation that it was not obligated to subsidize alternative transportation under such circumstances. We must so find here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1964.