

Award No. 14417

Docket No. TE-13479

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

NORFOLK AND WESTERN RAILWAY COMPANY

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

CLAIM No. 1

1. Carrier violates an agreement between the parties hereto by its failure and refusal to properly compensate R. R. Oakes, regularly assigned relief employe, position No. 20, for automobile mileage allowance in traveling from Roanoke, Va., to RD Tower, East Bluefield, W. Va., on March 23 and 30, 1961, and each and every Thursday in connection with relief service performed at RD Tower.

2. Carrier shall, because of the violations set out in paragraph one hereof, compensate R. R. Oakes for 202 miles at .07 per mile, \$14.14 for each date, and Carrier shall, similarly compensate R. R. Oakes for each Thursday thereafter so long as the violation here complained of continues to exist.

CLAIM No. 2

1. Carrier violated an agreement between the parties hereto by its failure and refusal to properly compensate Extra Operator G. O. Reed, for automobile mileage allowance in traveling from Roanoke, Va., to RD Tower, East Bluefield, W. Va., on April 13 and 20, 1961, in connection with relief service performed on Relief No. 20.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate G. O. Reed for 202 miles at .07 per mile for each day April 13 and 20, 1961.

EMPLOYEES' STATEMENT OF FACTS:

CLAIM No. 1

The facts in Claim No. 1 are: R. R. Oakes, hereinafter referred to as Claimant, is the regularly assigned occupant of Relief Position No. 20. As such, he is assigned as follows:

On the dates of claim in this case train No. 3 was scheduled to depart from Roanoke passenger station at 7:15 P.M. and to arrive at Bluefield passenger station at 10:00 P.M. Train No. 4 was scheduled to depart from Bluefield passenger station at 8:40 A.M. and to arrive at Roanoke passenger station at 11:15 A.M.

Neither train No. 3 nor train No. 4 is scheduled to stop at East Bluefield Yard. In this connection, it is impracticable to stop train No. 3 at East Bluefield Yard account heavy ascending grade.

Since the use of trains Nos. 3 and 4 would permit this relief employe to reach RD tower not more than two hours in advance of the starting time of the assignment and to leave such location not later than two hours after quitting time of the assignment, the incumbent of the assignment was expected to use these trains in traveling to and from his assignment at RD tower.

The Employes filed the following claims:

CLAIM No. 1

"1. Carrier violated the Agreement when it failed and refused to properly compensate regularly assigned relief employe R. R. Oakes for automobile mileage for traveling from Roanoke, Virginia, to RD Tower, East Bluefield, West Virginia, March 23 and 30, 1961 in connection with service performed, working Relief No. 20, which has each and every Thursday assigned.

2. Carrier shall now compensate R. R. Oakes for 202 miles at .07 per mile, \$14.14 for each day, total amount \$28.28. Further, each Thursday as long as this violation exists."

CLAIM No. 2

"1. Carrier violated the Agreement when it failed and refused to properly compensate Extra Operator G. O. Reed for automobile mileage for traveling from Roanoke, Virginia, to RD Tower, East Bluefield, West Virginia for April 13 and 20, 1961 in connection with performing relief service on Relief No. 20.

2. Carrier shall now compensate G. O. Reed for 202 miles at .07 per mile for each day, April 13 and 20, 1961. Total amount \$28.28."

The Carrier declined the claims.

(Exhibits not reproduced.)

OPINION OF BOARD: In March 1961 Claimant Oakes was assigned to a relief position which required that, one day a week, he travel from Roanoke, Virginia to RD Tower, East Bluefield, West Virginia. Claimant Reed, an extra telegrapher, replaced Oakes on this assignment during Oakes' April 1961 vacation. The hours of the RD Tower assignment were 12:01 A. M. to 8:00 A. M.

Rule 9, Section 1(c) 3 declares, in relevant part that:

"In the matter of affording transportation to employes holding regular relief assignments, the following is applicable:

* * * * *

(III) Except where the positions in a relief assignment are confined to one city, the Company will afford free transportation, or the equivalent in the form of reimbursement of bus or other transportation fares paid, or automobile mileage allowance, to a relief employe between his designated headquarters and each of the other positions included in his relief assignment on such days as it is necessary for him to perform service on such other positions, on the following bases:

(a) Free rail transportation, if available and reasonable within meaning of Section (V) hereof.

(b) If rail transportation is not available, or if it is not reasonable, the relief employe may elect to use either available and reasonable bus or other transportation, or his private automobile if he has complied with provisions of Section (VI) hereof; if the former is used Company will reimburse the relief employe for the fares so paid; if the latter, the relief employe will be allowed 7 cents per mile, according to rail mileage between the points. An extra employe, when filling the vacancy of an assigned relief employe, will be reimbursed for necessary travel to the extent provided in this Rule 9, Section 1, (c), (3)."

Section (V), referred to above, provides:

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

Petitioner's claims for automobile mileage allowance are based on its assertion that Carrier failed to provide Claimants with free transportation or the equivalent.

Carrier operates a passenger Train (No. 3) which leaves Roanoke 7:15 P. M. and arrives Bluefield 10:00 P. M. (This train passes RD Tower at 9:50 P. M. but does not stop.) Bluefield station is 3.2 miles from RD Tower. Train No. 4, going in the opposite direction, departs Bluefield station 8:40 A. M. and arrives Roanoke 11:15 A. M. (It does not stop at RD Tower.)

Under the applicable portions of Rule 9, the two points involved in Claimants' assignments were Roanoke and RD Tower. Carrier, in other words, was obligated to afford free transportation, or its equivalent in the form of reimbursement of bus or other fares (such as taxi fares), to Claimants for traveling between these two points. In lieu thereof, automobile mileage allowance was appropriate.

There is no evidence that Carrier representatives advised Claimant Oakes, when he assumed the relief position, of what transportation was available. He knew, of course, about Trains No. 3 and 4. But he was unaware of any transportation facilities which would have permitted him to go from Bluefield station to RD Tower between 10:00 P. M. and Midnight or from the Tower to the station between 8:00 A. M. and 8:40 A. M. In fact in his original April 18, 1961 claim, Petitioner specifically noted: ". . . now the question arises, how is the employe to get from the passenger station at Bluefield to RD Tower

which is 3.2 miles east . . .?" This query was reiterated in Petitioner's appeal letters of April 24, May 27, and October 31 (which followed a denial by Carrier's highest appeals officer). But, Carrier failed to respond, insofar as the record reveals, or to indicate that local transportation, in Bluefield, could have been utilized.

Had Carrier informed Claimants that they could have used bus or taxi for the second lap of their journey (and would reimburse them accordingly), we would probably have had no dispute (see Award 6279) or, at the least, the issue would have been different. Significantly, however, Carrier did not furnish any relevant information (or even state its position on this question) until its Rebuttal brief was submitted in October 1962. True, it noted there that (1) buses run beside the railroad tracks from Bluefield station to RD Tower, and (2) taxi service is available day and night. But this information, in our judgment, came too late, since it was not furnished in time for Petitioner to respond (the Organization had flatly stated in its October 31, 1961 letter that no city bus service was available), nor was it given to the Claimants while their grievances were under consideration. Carrier's assertion that it was given no opportunity to provide any means of transportation between the station and tower is not convincing.

In light of the above considerations, and after evaluating all the parties' contentions (some of which are not discussed here), it is our conclusion that the claims must be sustained. We make no finding, however (since none is necessary), concerning the propriety of requiring Claimants to use a combination train -- bus or train -- taxi service to satisfy Rule 9 requirements.

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 the Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1966.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.