



Award No. 15445
Docket No. TE-14098

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville & Nashville Railroad (NC&StL District), that:

CLAIM NO. 1

1. Carrier violated Article 9 of the parties' Agreement when on February 7 and 8, 1962 it failed and refused to furnish N. R. Holland, an extra employe, transportation from his headquarters at Chattanooga, Tennessee, to "WX" Office, Wauhatchie Yard Office, Tiftonia, Tennessee, and return to headquarters; and failed and refused to compensate said extra employe the minimum deadhead allowance of three (3) hours, in each direction, at the rate of the position on which he relieved when ordered to deadhead by Carrier.

2. Carrier violated Article V(a) of the May 20, 1955 Agreement between the parties when and because its officers, agents, and other designated representatives failed and refused to comply with said agreement by not giving its reasons for disallowance of the claim, and, therefore, the claim should be allowed as presented.

3. Carrier shall, because of the violation set out in para one hereof, reimburse N. R. Holland in the amount of three (3) dollars for each of the two (2) trips for transportation costs via taxi between Union Station, Chattanooga and Wauhatchie Yard Office, Tiftonia, Tennessee, and return, and for the minimum deadhead allowance of three (3) hours in both directions (6 hours) at the hourly rate \$2.53) of the position he relieved in accordance with the provisions of Article 9.

CLAIM NO. 2

1. Carrier violated Article 9 of the parties' Agreement when on March 24 and 28, 1962, it failed and refused to furnish N. R. Holland, an extra employe, transportation from his headquarters at Chattanooga, Tennessee, to "WX" Office, Wauhatchie Yard Office, Tiftonia, Tennessee, and return to headquarters; and failed and refused to

compensate said extra employe the minimum deadhead allowance of three (3) hours, in each direction, at the rate of the position on which he relieved when ordered to deadhead by Carrier.

2. Carrier violated Article V (a) of the May 20, 1955 Agreement between the parties when and because its officers, agents and other designated representatives failed and refused to comply with said agreement by not giving its reasons for disallowance of the claim, and, therefore, the claim should be allowed as presented.

3. Carrier shall, because of the violation set out in paragraph one hereof, reimburse N. R. Holland in the amount of three (3) dollars for each of the two (2) trips for transportation costs via taxi between Union Station, Chattanooga and Wauhatchie Yard Office, Tiftonia, Tennessee, and return, and for the minimum deadhead allowance of three (3) hours in both directions (6 hours) at the hourly rate (\$2.53) of the position he relieved in accordance with the provisions of Article 9. Total Amount due \$21.18.

CLAIM NO. 3

1. Carrier violated Article 9 of the parties' Agreement when on April 15 and 21, 1962 it failed and refused to furnish N. R. Holland, an extra employe, transportation from his headquarters at Chattanooga, Tennessee, to "WX" Office, Wauhatchie Yard Office, Tiftonia, Tennessee, and return to headquarters; and failed and refused to compensate said extra employe the minimum deadhead allowance of three (3) hours, in each direction, at the rate of the position on which he relieved when ordered to deadhead by Carrier.

2. Carrier shall, because of the violation set out in paragraph one hereof, reimburse N. R. Holland in the amount of three (3) dollars for each of the two (2) trips for transportation costs via taxi between Union Station, Chattanooga and Wauhatchie Yard Office, Tiftonia, Tennessee, and return, and for the minimum deadhead allowance of three (3) hours in both directions (6 hours) at the hourly rate (\$2.53) of the position he relieved in accordance with the provisions of Article 9. Total amount due \$21.18.

CLAIM NO. 4

1. Carrier violated Article 9 of the parties' Agreement when on May 27 and June 6, 1962 it failed and refused to furnish E. F. Gaier, an extra employe, transportation from his headquarters at Chattanooga, Tennessee, to "WX" Office, Wauhatchie Yard Office, Tiftonia, Tennessee, and return to headquarters; and failed and refused to compensate said extra employe the minimum deadhead allowance of three (3) hours, in each direction, at the rate of the position on which he relieved when ordered to deadhead by Carrier.

2. Carrier violated Article V(a) of the May 20, 1955 Agreement between the parties when and because its officers, agents, and other designated representatives failed and refused to comply with said agreement by not giving its reasons for disallowance of the claim, and, therefore, the claim should be allowed as presented.

3 . Carrier shall, because of the violation set out in paragraph one hereof, reimburse E. F. Gaier in the amount of three (3) dollars for each of the two (2) trips for transportation costs via taxi between Union Station, Chattanooga and Wauhatchie Yard Office, Tiftonia, Tennessee, and return, and for the minimum deadhead allowance of three (3) hours in both directions (6 hours) at the hourly rate \$2.53 of the position he relieved in accordance with the provisions of Article 9. Total amount due \$21.18.

CLAIM NO. 5

1. Carrier violated Article 9 of the parties' Agreement when on June 3, and 14, 1962 it failed and refused to furnish N. R. Holland, an extra employe, transportation from his headquarters at Chattanooga, Tennessee, to "WX" Office, Wauhatchie Yard Office, Tiftonia, Tennessee, and return to headquarters; and failed and refused to compensate said extra employe the minimum deadhead allowance of three (3) hours in each direction at the rate of the position on which he relieved when ordered to deadhead by Carrier.

2. Carrier shall, because of the violation set out in paragraph one hereof, reimburse N. R. Holland in the amount of three (3) dollars for each of the two (2) trips for transportation costs via taxi between Union Station, Chattanooga and Wauhatchie Yard Office, Tiftonia, Tennessee, and return, and for the minimum deadhead allowance of three (3) hours in both directions (6 hours) at the hourly rate (\$2.53) of the position he relieved in accordance with the provisions of Article 9. Total amount due \$21.18.

CLAIM NO. 6

1. Carrier violated Article 9 of the parties' Agreement when on June 18 and 20, 1962 it failed and refused to furnish L. L. Small, an extra employe, transportation from his headquarters at Chattanooga, Tennessee, to "WX" Office, Wauhatchie Yard Office, Tiftonia, Tennessee, and return to headquarters; and failed and refused to compensate said extra employe the minimum deadhead allowance of three (3) hours, in each direction, at the rate of the position on which he relieved when ordered to deadhead by Carrier.

2. Carrier shall, because of the violation set out in paragraph one hereof, reimburse L. L. Small in the amount of three (3) dollars for each of the two (2) trips for transportation costs via taxi between Union Station, Chattanooga and Wauhatchie Yard Office, Tiftonia, Tennessee, and return, and for the minimum deadhead allowance of three (3) hours in both directions (6 hours) at the hourly rate of (\$2.6328) the position he relieved in accordance with the provisions of Article 9. Total amount due \$21.80.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence agreements by and between the parties hereto, effective September 1, 1949, May 20, 1955 and as otherwise amended. Copies of said agreements are on file with your Board and are, by this reference, made a part hereof.

any consecutive twenty-four (24) hour period; the twenty-four (24) hour period to start at the time the extra employe leaves headquarters or other location."

Claims No. 1 (February 7 and 8, 1962), No. 2 (March 24-28, 1962), and Claim No. 4 (May 27 and June 6, 1962) also include the contention that Carrier violated Article V(a) of the May 20, 1955 National Agreement, which Article is quoted below:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

On August 30, 1957, by authority of the Interstate Commerce Commission, in Finance Docket 18845, The Nashville, Chattanooga and St. Louis Railway was merged into the Louisville and Nashville Railroad Company.

The working agreements between each of the railroads and its telegraphers have, to date, been continued in effect. The L&N agreement is applicable to those employes on what is known as "L&N District," former L&N territory. The NC&StL agreement is applicable to what is known as the "NC&StL District," former NC&StL territory.

Copies of the applicable NC&StL telegraphers' agreement, which became effective September 1, 1949, are on file with this Division.

OPINION OF BOARD: Article V of the May 20, 1955 Agreement is identical to Article V of the August 21, 1954 National Agreement. It provides that "the Carrier shall, within 60 days from the date same (claim) is filed, notify whoever filed the claim or grievance . . . in writing of the reasons for such disallowance." Claim Nos. 1, 2 and 4 allege that Carrier failed to notify petitioner, in writing, of the reasons for disallowance. The District Chairman timely raised this issue on the property. However, this issue was not included in the General Chairman's ultimate appeal to Carrier's highest officer. The issue, therefore, is held to have been abandoned on the property. Petitioner's motion that the Claim be allowed as presented because of the alleged violation of Article V is denied. We proceed to consider the Claim on its merits.

On April 12, 1961, Carrier put in operation a new freight yard at Wauhatchie which is 8 miles from the Union Station, Chattanooga, Tennessee, and 5 miles outside the city limits. For operational reasons Carrier extended the Chattanooga terminal limits to include the new facility. The Claimants are extra employes, telegraphers, who on the dates specified in the Claims were on the extra list maintained at Chattanooga and were assigned to work at Wauhatchie. It is Petitioner's position that the following provision of the Agreement obligated Carrier to furnish Claimants transportation to Wauhatchie Yard and return, in addition to actual time consumed deadheading:

"ARTICLE 9. DEADHEADING

Extra employes shall be furnished transportation and paid for actual time consumed in deadheading to and from positions and headquarters and when ordered by proper authority. The rate of pay for such deadheading shall be at the rate of the position relieved with a minimum of three (3) hours and a maximum of eight (8) hours in any consecutive twenty-four (24) hour period; the twenty-four (24) hour period to start at the time the extra employe leaves headquarters or other location."

It appears to be the Petitioner's contention that because the extra list is maintained at Chattanooga that city is the employes headquarters and that any assignment beyond the city limits brings Rule 9 into play. This is predicated upon a misconstruction of Rule 20(f) which deals with where extra lists will be maintained on divisions and not with the headquarters of the employes whose names appear on the list. This is made clear by referring to Addendum 2 of the Agreement which does show headquarters for listed positions at various locations on the Chattanooga Division. We are convinced from the record and knowledge of the industry that the Claimants' headquarters are the whole area encompassed by the Chattanooga terminal limits and Rule 9 does not apply to an extra assignment of the kind here involved in that territory. Further, we find nothing in the Agreement which proscribes Carrier's management prerogative to fix the terminal limits in the absence of proof that the action was taken unreasonably with the intent to evade the terms of the Agreement; and, we find no such proof in this record. We will deny the Claims.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1967.

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