



Award No. 15533
Docket No. TE-14389

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violates the Agreement between the parties in requiring J. D. Folds, Agent at Rock, Florida, to use his privately owned automobile in the handling of Company business and declines to adequately reimburse him therefor.

2. Carrier shall, commencing August 1, 1962 and continuing thereafter so long as Mr. Folds is required to use his automobile in the handling of Company business, be required to reimburse him at the mileage rate established by the Carrier (seven cents per mile).

3. Carrier violated the Agreement between the parties when it failed and refused to pay Mrs. C. L. Soltow, Extra Telegrapher, in the sum of \$44.80, representing 640 miles she was required to drive her privately owned automobile in handling Company business at Rock, Florida, during the period June 14 to 30, 1962.

4. Carrier shall be required to pay Mrs. C. L. Soltow \$44.80, representing the 640 miles she operated her privately owned automobile at the rate established by the Company (seven cents per mile).

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective January 1, 1959, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The position of Agent at Rock, Florida, is monthly rated. Like on many of the Carrier's agency positions, it is necessary that the Agent at Rock use an automobile in the course of performing various duties of his position. Carrier does not furnish the Agent at Rock with an automobile. Rather, the Agent at Rock, as do most if not all the Agents on positions that require the use of an automobile, uses his privately owned auto in attending to the business of the railroad.

relief agent, is entitled to her proportionate share of the agreed-to allowance.

Therefore, the claim as presented is respectfully denied. If Mrs. Soltow will submit Form 413 in accordance with Rule 27 covering the mileage from Mulberry to Rock, allowance will be made accordingly. Her proportionate share of the agreed-to monthly allowance while relieving the agent at Rock will be handled on the customary basis.

Very truly yours,

/s/ S. M. Duffer
Director of Personnel"

On the same day he appealed claim of Extra Telegrapher Soltow, Petitioner appealed to Director of Personnel a claim that Carrier be required to allow Agent Folds the mileage rate of seven cents per mile established by the Company for using his automobile in handling Company business. That claim was denied to the Petitioner's General Chairman in following letter also dated October 10, 1962:

"Mr. L. G. Parker, General Chairman
The Order of Railroad Telegraphers
6710 Wessex Lane
Richmond 26, Virginia

Dear Sir:

Please refer to your letter of September 15, 1962, File TE 908-(6)-Rock, appealing to me the decision of Superintendent High in claim of Mr. J. D. Folds.

This claim as presented by District Chairman Roberts alleges that Mr. Folds is required to drive his automobile approximately 750 miles per month for transaction of company business in his capacity as Agent at Rock, Florida. While I have not developed the information to confirm or deny this figure, I am advised that the Superintendent entered into an agreement with Mr. Folds allowing him \$10.00 per month for using his automobile to transact certain business in connection with his position as Agent. Recently, this allowance has been increased to \$20.00 per month. I do not know of any contractual reason for overturning the agreed-upon allowance, and, therefore, your claim as appealed is respectfully denied.

Very truly yours,

/s/ S. M. Duffer
Director of Personnel"

OPINION OF BOARD: The Petitioner in this case is requesting this Board to make an award compensating Claimants seven (7) cents per mile for the use of their personal automobiles in the transaction of Carrier's business instead of the flat monthly rate made by the Carrier.

Carrier allows seven cents per mile to some employees who use their privately owned automobiles in company business. In some case, in lieu of

seven cents per mile, the Carrier allows a flat, lump sum payment to certain employees.

The Carrier does not dispute nor does it offer any evidence to indicate that the mileage claimed by Petitioner was unnecessary or not connected with the Company's business. It asserts that the Petitioner has not cited a specific rule governing this type of situation, has not cited a rule as having been violated, and, in the absence thereof, requests that we deny the Claim.

The mileage claimed and remaining unrefuted in the record as being connected with Carrier's business, poses a question of equity. Whatever we may think about the fairness of the Claim, we are constrained to say that we neither possess the authority nor the power to impose our sense of equity on the parties to the agreement. (See Awards 10068 (Weston) and 10245 (Gray), among others.)

Superimposed on the above is the fact that the Petitioner has not cited a rule specifically as having been violated; further, a review of the record convinces us that there is no rule to support the claim, and in the absence of such a rule, the Board is powerless to supply one. This principle has been well enunciated in numerous awards of this Board. We cite one of the many in Third Division, Award 10994 (Hall), wherein it was held:

"This Board has no authority to supply rules where none exist. . . . Consequently, there being no rule, there could have been no violation of same."

Accordingly, we will deny the Claim.

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 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 Agreement was not violated.

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 April 1967.

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