

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
NORFOLK AND WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk & Western Railway Company, TC-5714, that:

"Claim in favor Extra Agent and Operator J. P. Stollings, for car mileage and away from home expense, forms Compt. 119, for each month beginning October 15, 1967 through December 31, 1967, inclusive, are herewith attached for payment, etc. (T.C.U. File 5714)"

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute is predicated on various provisions of the collective bargaining Agreement, entered into by the parties effective February 16, 1958, and more specifically upon provisions of the following Agreements, Award of Arbitration Board No. 298 and its Supplemental Agreement dated October 25, 1968 and the Memorandum Agreement dated March 21, 1966.

We are not including the Award of Arbitration Board No. 298, and only the relevant portions of the Memorandum Agreement dated March 21, 1966 (T-C Division, BRAC Exhibit No. 3); this is due to the voluminous and burdensome material having no bearing or connection with our dispute. Employees submitted claim to the proper officers of the Carrier, at the time and in the usual manner of handling as required by Agreement rules and applicable provisions of law. Conference was held July 22, 1969, between the parties.

The controversy arose on December 24, 1968, because Carrier denied claim for Auto Mileage and Lodging for dates in October, November and December, 1967, as shown in claim.

Carrier's reason for denial was that it had disposed of these claims in a settlement covered by Files 0-1779 and 0-1790.

Employees contend the claims presented were not disposed of by any settlement. These claims are based on provisions of the October 25, 1968 Agreement. This Agreement was consummated after the settlement of claims in Files 0-1779 and 0-1790.

OPINION OF BOARD: From a careful study of the record, it appears that:

1. The claim is predicated solely on a Supplemental Agreement dated October 25, 1968, effective retroactively to October 15, 1967, which provides for compensation, equal to what is claimed, for employees situated as the Claimant was.
2. That agreement, with an exception to be hereinafter discussed, provides for the compensation claimed.
3. Carrier has not shown by probative evidence that the result of handling a similar claim under an earlier agreement disposed of the present claim.
4. The exception referred to in 2 above is contained in Section 4 of the Supplemental Agreement, and reads as follows:

"... The \$7 per day allowance provided for in this Agreement is applicable as herein provided after the date this Agreement is made."

The Employees contend that since the Agreement was effective retroactively to October 15, 1967, all of its provisions must be applied retroactively to that date. The claim covers the period from October 15, 1967 through December 31, 1967. The difficulty with the Employees' contention is that it gives no effect to the language in Section 4, quoted above.

It is well settled that this Board must apply agreements as written. The quoted sentence clearly removes the "\$7 per day allowance" from the retroactive effect of the rest of the Agreement and makes this particular provision effective "after the date this Agreement is made." The Agreement was made on October 25, 1968; therefore, the allowance referred to was not effective during the period of claim.

It follows that the claims for the "\$7 per day allowance" must be denied.

However, no such exception to the retroactive effect of the Agreement with respect to the automobile mileage appears. That provision, therefore, was in effect during the period of claim, requiring that the claims for automobile mileage be sustained.

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 violated to the extent indicated in the Opinion.