



Award No. 18584

Docket No. TE-18942

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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, T-C 5753, that:

Claim No. 1

Carrier shall now be required to compensate Mr. Raymond E. Oakes, Jr., in the aggregate amount of \$388.30 covering away-from-home expenses and automobile mileage for the months of March, April and May, 1968 while he was in the employment of the Norfolk and Western Railway Company.

Claim No. 2

Carrier shall now be required to compensate Mr. Johnson H. Morrisette in the aggregate amount of \$739.16 covering expenses away from home and automobile mileage for the months of October, November and December, 1967 and January, February, March and April, 1968, while he was in the employment of the Norfolk and Western Railway Company.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The issue involved herein is predicated upon various provisions of the collective bargaining agreement between the Norfolk and Western Railway Company and the Employees represented by T-C Division, BRAC, as amended and supplemented, effective date of February 16, 1958, and more specifically the Supplemental Agreement between the parties dated October 25, 1968, but whose terms were effective on October 15, 1967, as the Agreement states. These Agreements are made available to your Board and by this reference are made a part hereof.

The two disputes were handled in the usual manner on the property and in accordance with the agreement provisions of the Railway Labor Act;

CARRIER'S STATEMENT OF FACTS: On September 30, 1967, an award was rendered by Arbitration Board No. 298, the provisions of which were made effective October 15, 1967. Copy of the award is attached herewith for ready reference, identified as Carrier's Attachment "A". Section V of this award was made to read as follows:

"Insofar as there are presently agreements in effect between any of the carriers and organizations party to this arbitration which agreements include provisions dealing with the types of employee benefits provided for in Sections I, II and III, and the subparagraphs thereof in this award, the organizations party to such existing agreements shall have the option of accepting any or all of the benefits provided in this award or of continuing in effect any or all of the provisions of the existing agreement in lieu thereof. Such election must be exercised on or before December 31, 1967. There shall be no duplication of benefits."

The parties to whom the award was made to apply entered into subsequent agreements to extend the time within which the organizations subject to the award were to exercise their options under the above quoted Section V of the award.

The System Division of the Telegraphers' Organization involved in this dispute exercised its options under such Section V of the award by letter dated January 10, 1968, copy of which letter is attached hereto as Carrier's Attachment "B." Further exchanges of correspondence occurred between the parties as shown in Carrier's Attachments "C-1," "C-2" and "C-3" hereto.

A series of conferences then followed, culminating in the parties signing a Supplemental Agreement on the date of October 25, 1968. Copy of such Supplemental Agreement is attached hereto as Carrier's Attachment "D." The preamble paragraph of that agreement shows that the agreement was made "* * *" for the purpose of implementing Award of Arbitration Board 298, dated September 30, 1967."

In the meantime, Raymond E. Oakes, Jr., the Claimant named in Claim No. 1 in this case, resigned from the service of this Carrier on August 27, 1968, and Johnson H. Morrisette, the Claimant named in Claim No. 2 in this case, resigned from the service of this Carrier on April 27, 1968.

Nevertheless, during the month of April, 1969, claims for automobile mileage allowances and away-from-home expenses under provisions of the October 25, 1968 Supplemental Agreement (Carrier's Attachment "D" hereto) were filed by Claimant Oakes for the months of March, April and May, 1968, and by Claimant Morrisette for October, November and December, 1967, and January, February, March and April, 1968.

The Carrier declined these claims.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves a question of retroactive application of an agreement to employees who in the interim between execution of the agreement and its retroactive effective date left the service of the Carrier.

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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.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.