**Award No. 19097**

**Docket No. TE-19146**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Thomas L. Hayes, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
## (Formerly 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 (former Virginian), T-C 5787, that:

1. Carrier violated the Agreement between the parties when it refused or failed to reimburse Relief Agent E. G. Saunders for the cost of meals while away from his headquarters point on December 20, 27 and 30, 1968.

2. Carrier shall now be required to compensate Relief Agent E. G. Saunders in the amount of $10.75 covering cost of meals while away from his headquarters at Victoria, Virginia on dates shown in Item 1 above.

EMPLOYES' STATEMENT OF FACTS:

(a) Statement of the Case

The instant dispute arose because Carrier refused to compensate the Relief Agent on the Norfolk Division for the cost of meals which he incurred while working away from his headquarters point on December 20, 27 and 30, 1968. The Employes contend that the effective Agreement requires Carrier to pay such cost.

The claim was timely filed and thereafter handled in the usual manner up to and with the highest officer designated by Carrier to handle such claims. It was discussed in conference on November 17, 1969 and February 19, 1970, after which Carrier reaffirmed its previous declinations.

(b) Issue

Is the Claimant entitled to be reimbursed for the cost of meals which he incurred while performing service away from his headquarters on the claim dates?

is attached hereto as Carrier's Attachment "B." The preamble paragraph of that agreement shows that the agreement was made "* * * for the purpose of implementing award of Arbitration Board No. 298, dated September 30, 1967." The last paragraph appearing under Section 2 of this supplemental agreement was made to read as follows:

> "Article 25 of the Schedule Agreement is amended to provide the allowances set forth in Paragraphs (a), (b), (c), and (d) of this Paragraph 2 to the positions of Relief Agent on the Norfolk and New River Divisions in lieu of expense allowances provided for therein."

E. G. Saunders, the Claimant in this case, held the position of Relief Agent on the Norfolk Division.

Brookneal, Virginia is a point located 44 miles away from Victoria, Virginia, the latter being the headquarters point of Claimant Saunders' Relief Agent assignment. Mr. Saunders was used to provide relief on the position of Agent at Brookneal commencing on Monday, December 16, 1968, and continuing through Friday, December 27, 1968. Under the provisions of Section 2 of the Supplemental Agreement dated October 25, 1968, Mr. Saunders was compensated for automobile mileage allowance and travel time for traveling from Victoria to Brookneal on December 16, 1968. He was also compensated for $7.00 per day meal and lodging allowance for each date, December 16, 17, 18 and 19, 1968. He was instructed to and did return to his headquarters point at Victoria, Virginia on Friday, December 20, 1968. He was compensated for automobile mileage allowance and travel time for traveling from Brookneal to Victoria on Friday, December 20, 1968, and for returning to Brookneal on Monday, December 23, 1968. He was then compensated for $7.00 per day meal and lodging allowance for each date, December 23, 24, 25 and 26, 1968. He was released from this relief work and returned to his headquarters point at Victoria on Friday, December 27, 1968. He was compensated for automobile mileage allowance and travel time for traveling from Brookneal to Victoria on Friday, December 27, 1968.

On Monday, December 30, 1968, Mr. Saunders was used to perform only one day of relief work on the position of Agent-Operator at Jarratt, Virginia, a point located about 46 miles away from Victoria. He was compensated for automobile mileage allowance and travel time for traveling from Victoria to Jarratt and return on such date.

The Employes filed the following claim:

> "1. The Carrier violated the Agreement between the parties when it refused or failed to reimburse Relief Agent E. G. Saunders for the cost of meals while away from his headquarters point on December 20, 27 and 30, 1968.
>
> 2. Carrier shall now be required to compensate Relief Agent E. G. Saunders in the amount of $10.75 covering cost of meals while away from his headquarters at Victoria, Va. on dates shown in Item 1 above."

The Carrier declined the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** At the time this dispute arose the claimant occupied a position of Relief Agent, established under the provisions of Article

25 of the parties' agreement. As such, he worked at various locations on his seniority district relieving regular assigned agents and performing other work as assigned, in accordance with the rule. His headquarters station was Victoria, Virginia.

During the second half of December, 1968, claimant worked the two work weeks from December 16 to 29, inclusive, relieving the agent at Brookneal; and on the 30th he worked one day at Jarratt. Brookneal is 44 miles from the headquarters station, and Jarratt is 46 miles away. Thus, on both assignments claimant was working away from his headquarters point.

The Brookneal assignment included two rest-day weekends, December 21 and 22; and December 28 and 29. Claimant did not work on these four days. However, on December 20, and again on December 27, after completing the fifth work-day of each week, he returned to his headquarters.

The agreements between the parties provided that such employes will be allowed certain expense and travel allowances when required to work away from their headquarters point. These provisions will be further explored below.

Claimant was allowed travel expense for all of the trips made as provided. He was also allowed the maximum meal and lodging expense for the first four days of each week he was assigned at Brookneal. He claimed that on December 20, 27 and 30, days on which he actually performed service away from his headquarters point, he should have been paid the actual meal expense incurred on those days, a total of $10.75 for the three days. Carrier declined, contending that since he returned to his headquarters on each of those days and was paid the travel expense provided therefor, he was not entitled to meal and/or lodging expenses.

Article 25 of the basic agreement reads as follows:

> "Not less than one position as Relief Agent will be established on each division. The monthly salary of each position will be $250.00. Two dollars ($2.00) per day will be allowed for expenses for each day away from headquarters and allowance of 4½¢ cents per mile will be made when instructed to use own automobile in carrying on the duties of said position. The use of Relief Agents for other than Relief work may be permitted only when and if no Relief work is available. Headquarters for each Relief Agent will be assigned."

The salary and expense provisions have been amended from time to time to reflect wage increases and increases in expense. In the present case we are not concerned with either the salary or travel allowance, but only with the specified "away from headquarters expense," which was $3.50 per day prior to the inception of the dispute.

The record appears to support a conclusion that this expsene allowance was made for each day that a Relief Agent worked away from his headquarters, including the last day of a week or assignment when he returned to his headquarters after completing work.

The Carrier and petitioning employes were parties to a proceeding under the Railway Labor Act which resulted in an award rendered by Arbitration Board No. 298, providing travel and lodging expense allowances for employes required to work away from their headquarters point.

This award gave the employe representatives an option of retaining the existing agreement provisions relating to the subject matter, or of accepting any or all of the benefits provided by the award in lieu of the existing benefits. The Employes here chose to accept the allowances of the award in lieu of those provided by Article 25 for Relief Agents. The agreement implementing the award of Arbitration Board No. 298 contains the following:

> "Article 25 of the Schedule Agreement is amended to provide the allowances set forth in Paragraphs (a), (b), (c), and (d) of this Paragraph 2 to the positions of Relief Agent on the Norfolk and New River Divisions in lieu of expense allowances provided therein."

The gravamen of the claim before us lies in the contention of the Employes that this revision of Article 25 applies only to the amount of the allowances and not to the conditions surrounding their payment. And, since the daily expense was allowed, prior to the amendment, on days such as those here involved, it should continue to be allowed after the amendment, but at the increased rate.

The Arbitration Board has interpreted its award to mean that on any day an employe is authorized to return to his headquarters point he is entitled either to be reimbursed for cost of meals and lodging or to the travel time and transportation allowance, but not both. Interpretation No. 44, Arbitration Board No. 298.

While that interpretation related to extra employes, it is clear that the parties here have placed Relief Agents in the same category as extra employes so far as the benefits of the award are concerned.

Carrier relies on the interpretation as support for its denial of the meal expense claimed.

Thus it is clear that the narrow issue in dispute is the extent to which Article 25 was amended. If only the allowances were increased to those provided by the Award, the claim is good. But if both the allowances and the conditions surrounding them were replaced by the Award the claim will fail.

The issue is indeed narrow, and the position of the Employes is not frivolous. However, after careful and thoughtful consideration we must decide against them, for two reasons: First, if it had been the intent to retain all existing conditions and merely increase the amounts provided by Article 25, it would have been easy to indicate such intent by appropriate language or to have made the amendment of Article 25 a separate undertaking, as had been done in the past when such increases were negotiated. Second, it is axiomatic that one who accepts favorable provisions of an agreement must also be deemed to have accepted all of its provisions, including those unfavorable to him. For these reasons the claim must be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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