

Award No. 19138

Docket No. SG-19021

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

On behalf of Signal Foreman P. L. Tocke for reimbursement of his fare for week-end trips between his work point and his home on February 3, 10, 17 and 24, 1969, and continuing until he is furnished free transportation in line with Agreement Rule 25(a). (Carrier's File: Case No. F-1060)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of September 1, 1949 which is by reference made a part of the record herein. The pertinent provisions thereof are:

"RULE 25

(a) When the majority of the employees in a crew elect, and conditions permit, they may make week-end trips to their homes. Assigned time lost account making such trips will not be paid for however, men may make up such lost time either before or after making such trips, outside of regular hours of assignment as directed by the Management at regular rate. When such trips are made, free transportation will be furnished."

This dispute arose because the Carrier refused to furnish transportation for Signal Foreman P. L. Tocke for week-end trips from his camp trailer headquarters to his home and return, as provided by the current Agreement. This dispute was handled in the usual and proper manner, up to and including the highest officer of the Carrier designated to handle such disputes, without settlement. Pertinent correspondence has been reproduced and attached hereto, identified as Brotherhood's Exhibits Nos. 1 through 10.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: That portion of the instant claim reading: "* * * and continuing until he is furnished free transportation in line with Agreement Rule 25 (a)" is, for reasons that will be fully explained

by any employe within the scope of the Signalmen's Agreement prior to the filing of the instant claim.

Attached hereto as Carrier's exhibits are copies of the following letters:

Letter written by Mr. L. W. Harrington, Vice President-Labor Relations to Mr. D. E. Twitchell, former General Chairman, under date of October 6, 1969Carrier's Exhibit "B"

Letter written by Mr. Harrington to Mr. Twitchell under date of November 4, 1969Carrier's Exhibit "C"

Letter written by Mr. Harrington to Mr. L. T. Davies, General Chairman, under date of January 22, 1970Carrier's Exhibit "D"

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim based on Carrier's alleged violation of Rule 25(a) which reads as follows:

"(a) When the majority of the employes in a crew elect, and conditions permit, they may make week-end trips to their homes. Assigned time lost account making such trips will not be paid for however, men may make up such lost time either before or after making such trips, outside of regular hours of assignment as directed by the Management at regular rate. When such trips are made, free transportation will be furnished."

It is the Carrier's contention that the proper interpretation of Rule 25(a) is that the Carrier will provide free transportation on passenger trains over the Carrier's line when available. The problem has arisen here because the Carrier has terminated its passenger service and the Claimant wishes reimbursement for out of pocket expenses for alternative transportation.

There are other cases decided by this Board wherein it has been held that "free transportation" as referred to in Rule 25(a) means passenger service on the Carrier's own lines. See Awards 16745 (Friedman) and 17351 (Yagoda).

It is urged upon this Board that the absence of the words "consistent with regulations" at the end of Rule 25(a) denotes a broader obligation on the part of the Carrier than was present under the Rules interpreted in the above cited cases.

We are not persuaded that the presence or absence of the words "consistent with regulations" bears on the proper interpretation of this type of rule. We are inclined to follow the line of cases previously decided by this Board and in so doing hold that they apply to the interpretation of the Rule herein.

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 21st day of April 1972.

Dissent to Award 19138, Docket SG-19021

The Majority in Award 19138 has committed palpable error. An Agreement rule that is clear and free of ambiguity has been rendered essentially meaningless, and the respondent Carrier has been granted relief from its contractual obligation to its employes.

Awards 16745 and 17351 are cited in support of the decision. Award 16745 disposes of a dispute between different parties and was based on a distinguishable agreement provision. Award 17351 is not only between different parties, it does not even relate to the present subject.

The Majority says that it is not persuaded that the presence or absence of the words "consistent with regulations" in this type of rule bears on the proper interpretation. Surely the Majority will not also maintain that parties to an Agreement change their agreement without purpose. Therefore, when the present parties changed their agreement to its present form, they had a purpose in omitting the words "consistent with regulations" found in a prior Agreement, but the Majority did not face that fact and we can only conclude that it could not. Hence, the absence of the words "consistent with regulations" does have a bearing, at least in the present Agreement.

Award 19138 is in error, and I dissent.

**W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member**

**CARRIER MEMBER'S ANSWER TO LABOR MEMBER'S DISSENT
TO AWARD 19138 (SG-19021)**

(Referee Franden)

The award is sound. The only error is a typographical error of which the dissenter should have been aware. Award 12351 (Yagoda) was cited in support of Carrier's position however due to a typographical error it mistakenly appears as 17351.

P. C. Carter

G. L. Naylor

H. F. M. Braidwood

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