NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21023
THIRD DIVISION Docket Number MU-20821

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Robert W. Blanchette, Richard C. Bond, and
( John H. McArthur, Trustees of the Property of
( Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

The Carrier shall reimburse the employee named below for the week-end travel expenses each incurred from January through June, 1972.

| NAME | TOTAL AMOUNT |
|---|---|
| Carpenter Foreman C. L. Snyder | $ 70.20 |
| Painter Foreman C. L. Raplee | 264.78 |
| Carpenter J. W. Herrold | 593.65 |
| Carpenter L. A. Stankiewicz | 315.90 |
| Carpenter T. R. Griffith | 412.65 |
| Painter W. J. Fenstermacher | 179.10 |

(System Docket No. 301)

OPINION OF BOARD: The basic facts involved in this dispute are not seriously in contention. The Claimants are B & B employes headquartered in camp cars on Carrier's Susquehanna Division. They are regularly assigned from Monday to Friday each week, with Saturdays and Sundays designated as rest days. From January through June, 1972 (the period here involved), Claimants were living in camp cars away from their respective homes. Inasmuch as there was no work to be performed during weekends, Claimants visited their homes. Petitioner contends they were entitled to be furnished with transportation to make such weekend trips to their homes under the provisions of Rule 7-E-l, which reads as follows:

> "When agreed to between the Manager, Labor Relations and General Chairman, employee living in camp or outfit cars will be allowed to make week-end trips to their homes. Any time lost on this account will not be paid for. Such time lost shell be made up outside of regular working hours on other days at straight-time rates for hours so worked.

"Employes living in camp or outfit cars on portions of the railroad where there is no passenger service will be furnished necessary transportation to the nearest point where railroad passenger service is available to make week-end trips to their homes."

However, such passenger service was not available, having been discontinued by Carrier. As a result, Petitioner contends, Claimants were required to use their private automobiles for such trips. This is the basis of the claims; i.e., car mileage allowance at 9¢ per mile for each weekend trip to and from their homes.

Carrier does not contend that the amounts claimed are improper, exaggerated or excessive in terms of actual mileage. It urges, however, that *since* "passenger service" was not available Rule 7-E-l does *not* apply and that Carrier is not required to compensate Claimants for an alternative means of transportation, use of their cars. It is urged, further, that this Board has no authority to rewrite the Agreement and that our sole function *is* to apply the Agreement as written. In short, where no Rule exists supporting the claim, we are not at liberty to supply one.

Petitioner does not disagree, but maintains nevertheless that a basic element of Rule 7-E-1, passenger service, was eliminated by unilateral action of Carrier and that the Board is empowered, therefore, to substitute an alternate method of transportation, established by "past practice", to fill the void.

Carrier counters that the payment of car allowance in the past was due to error and that, having discovered such error, it discontinued the practice in October, 1971.

We are sympathetic to the position of Claimants, recognizing that their desire to visit their hones over weekends is a legitimate and understandable objective. We are conclusively persuaded, however, by the overwhelming weight of authority holding that the Board is required to apply the Agreement as negotiated between the principals. Were we to substitute other language for that specifically contained in the Rule, we would indeed be rewriting the Agreement. Prior Awards are virtually unanimous that we are not authorized to do so.

See Awards 7166, 8538, 9212, 10585, 12818, 14531, 15533, 16552, 17579, 18379, 19060, 19555, 19819, 20276 and 20383, among many others.

Petitioner cites a number of prior Awards on well established principles, with which we have no quarrel. No case is cited, however, which bears on the factual issues which confront us here or which concerns interpretation of the specific Rule before us.

Carrier, on the other hand, cites as precedent several prior Awards dealing with similar factual situations on weekend travel allowance. Although these Awards deal with Rules not precisely the same as Rule 7-E-1, the principles involved are identical. In each of these cases the claims were denied, basically on the finding that "the rule is intended to assure employes free transportation on the Carrier's rail facilities when such are available; we find no obligation for subsidizing weekend transportation to home and return when other means are used." The "other means" consisted of private car usage as against Carrier's "rail facilities" provided for in the Rule but, in fact, not available.

See Awards 12351, 16745, 18304, 18861, 19138, 20286 and 20287.

We acknowledge the validity of Petitioner's contention that where an ambiguity exists in an Agreement, it is permissible in appropriate circumstances to refer to "past practice" as determinative of the intent of the parties. However, we find no ambiguity in the confronting Rule. The clause "where railroad passenger service is available" is precise and unambiguous. The basic element upon which the Rule hinges, "passenger service", no longer exists. This does not reader the Rule "ambiguous", but renders it inoperative in its precise context. Obviously, a new Rule is required consistent with current conditions of travel facilities.

As demonstrated above, the Board is without authority to supply such new Rule. Accordingly, we do not sustain Petitioner's contention on the latter issue.

We quote from Award 17519 (Rohman) which summarizes our position succinctly:

> "In order for us to construe the Agreement as the Organization argues, we would be required to add to the terms thereof. We recognize that our function is limited to interpreting the Agreement as negotiated by the parties. We lack the power to add, amend, alter, or abrogate any provision of the effective Agreement."

Nor are we authorized to enter an area of resolution which is exclusively reserved to the principals, that of collective bargaining.

Accordingly, in view of the foregoing findings and on the basis of established precedent we are compelled to 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.