

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23356
Docket Number CL-23356

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight **Handlers**, Express and Station **Employees**
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9000)

(1) The Missouri-Kansas-Texas Railroad **Company** violated the current Rules Agreement between the parties, **including** but not limited to Article **V** of Addendum No. **5**, when it failed and refused to compensate Mrs. Pearl **McCutcheon**, mother of employee James E. **McCutcheon**, accidentally killed on **May 8, 1978**, in **accordance** with the terms thereof.

(2) The Missouri-Kansas-Texas **Railroad** Company shall now be required to compensate Mrs. Pearl **McCutcheon** the sum of **\$90,000.00** plus interest at the rate of six percent (**6%**) compounded annually from sixty (60) days following the death of Mr. James E. **McCutcheon**, **May 8, 1978**.

OPINION OF BOARD: Toe claimant seeks a death benefit as the mother and beneficiary of a deceased employee who was accidentally killed when traveling in his personal automobile from his residence to his place of employment..

The Organization alleges **that** the employee meets the requirements of Addendum No. **5** of Article **V** which sets **out the circumstances under which** payments are made to **employees**, or on behalf of employees, injured under the circumstances outlined therein. More specifically, the Organization alleges that the employee was **traveling** on the instructions of, and **at the** expense of, the Carrier.

The Carrier, on the other hand, alleges that the employee was commuting from his home to his job on a Monday morning having returned from his employment to his home on his own initiative for the weekend.

The employee was headquartered in Muskogee, Oklahoma, which **was** also his residence. At the time of his death, he was filling a vacancy on Position No. **8366** which was located at **Pryor**, Oklahoma. He had received **this assignment** on April **5, 1978**. He was **paid** the expenses of traveling to **Pryor**, Oklahoma for March 21, 1978, the date he received a previous assignment, immediately preceding this assignment, and had not been paid for any travel since then. He also claimed his room and board for the month of April. The death occurred on May **8, 1978** after he had returned to his home for the weekend on Friday, **May 5, 1978**.

Upon complete review of the record in this case, we can find no basis ~~for~~ the allegations of the Organization that the employe was traveling on the instructions of, or at the expense of, the **Carrier**.

The claimant obviously chose to return home for the weekend on his own volition and must be considered as **commuting** upon his return to his place of employment on the **Monday** morning of the fatal accident. Article V specifically excludes any compensation for injury which occurs while in a **commuting** status.

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. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.

