

Award No. 2604

Docket No. TE-2473

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Delaware, Lackawanna & Western Railroad Company, that clerk-operator P. J. Gillespie, regularly assigned as such at Plymouth be paid two (2) hours' travel time at the Mattes Street tower rate and one (1) dollar expenses each date December 6 and 13, 1942, and January 10, 11, 12, 13 and 14, 1943, he was required by the carrier to perform emergency relief service at Mattes Street tower, Scranton, Pennsylvania, and two (2) hours' travel time at the Bridge-60 tower rate and one (1) dollar expenses each date January 4, 5, 6, 7 and 8, 1943, he was required by the carrier to perform emergency relief service at Bridge-60 tower, Scranton, Pennsylvania; and that operator Joseph Paradise, regularly assigned as such at Kingston, be paid two (2) hours' travel time at the Mattes Street tower rate and one (1) dollar expenses each date December 19, 20, 21, 22 and 23, 1942, and January 6, 7, 8, 9 and 10, 1943, he was required by the carrier to perform emergency relief service at Mattes Street tower, Scranton, Pennsylvania, as provided by Rule 15-(a) of the Telegraphers' agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement between the parties, bearing effective date of May 1, 1940 is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The telegraphers' agreement referred to in the preceding paragraph, at pages 21, 23 and 24 (wage scale) lists:

MATTES STREET:	Towerman, First Trick	.77 per hour
	Towerman, Second Trick	.77 per hour
	Towerman, Third Trick	.77 per hour
BRIDGE 60:	Tower Director	.85 per hour
	Towerman, First Trick	.85 per hour
	Towerman, Second Trick	.85 per hour
	Towerman, Third Trick	.82 per hour
KINGSTON YARD:	Operator	.70 per hour
PLYMOUTH:	Agent-operator	\$205.20 per month
	Clerk-operator	.73 per hour

Rates shown were increased ten cents per hour, effective December 1, 1941.

pay. In addition to this they shall be reimbursed for any time lost in making the change, also receive one dollar (\$1.00) per day for expenses."

Rates paid at each of the points involved are:

Mattes Street, Scranton.....	87¢
Bridge 60—Scranton.....	85¢
Kingston	80¢
Plymouth	83¢

These men at their own request have occasionally been used on temporary vacancies at Mattes Street and Bridge 60 Towers, because of the higher rates of pay and saving in automobile expense or car fare when they use the "Laurel Line." In fact, Paradise has recently placed himself in a temporary vacancy at Bridge 60 and is now working the job.

Neither individual has made any claim for travel time or expense and both have stated that they incurred no expense.

There is no rule or practice to justify the claim, because:

(1) They were paid in excess of the rates of their respective assignments.

(2) They did not travel from point of their regular assignment to and from the temporary assignment.

(3) They lost no time in making the change.

(4) They incurred no expense—hence, can not be reimbursed.

(5) We find no Award of your Board authorizing deadhead allowance or travel time where no deadheading is performed or travel time incurred nor reimbursement of expense when no expense is incurred.

In the Carrier's submission in claim of alleged violation of the lunch hour rule at Plymouth, Pa. (Docket 2468) it is stated:

"In the meantime, dissension arose within the System Organization: their Charter was suspended by President Gardner, and a Grand Lodge Officer placed in charge of their affairs on this property, since which time accepted practices, interpretations of rules, and local agreements, making for convenience and comfort of the men, and which have been recognized and accepted by three General Chairmen, have been repudiated, and we have been deluged with claims (in excess of one hundred thirty) in trivial cases, of which this and others already submitted to your Board are samples."

In addition to the six ex parte submissions now before your Board (Secretary Johnson's letter to Mr. G. J. Ray, Vice President, dated August 4, 1943), the Organization has served formal notice on the Carrier of its intention to file thirty-five additional submissions, a large proportion of which originated with the Committee and are filed for the purpose of embarrassing the Carrier and to force upon the employees certain changes in seniority status which the Management feels is not warranted by the Schedule nor desired by a large number of its employees.

It is, therefore, the Carrier's contention that the claim is without merit and should be denied.

OPINION OF BOARD: Gillespie held a regular assignment at Plymouth, and Paradise a similar position at Kingston, 22 and 17 miles, respectively, south of Scranton, where both of said employees lived. They claim two hours for travel from the places of their regular assignments to points in Scranton where they were required to perform relief work and \$1.00 for expenses for each day they were so employed.

Rule 15 (a) provides that employees called upon to perform relief work away from their regular assignments shall be entitled to: (a) travel time

"to and from the temporary assignment"; (b) "reimbursement for any time lost in making the change"; and (c) "one dollar (\$1.00) per day for expenses."

The questions here presented are: (1) whether the claimants are entitled to the time ordinarily required to travel from the places of their regular assignments to the points where relief services were performed, in view of the fact that they lived at the latter and did not actually so travel; (2) whether travel time is to be computed for each day that relief work continues, or merely for the initial trip to and the final trip from such work as continuous from day to day; and (3) whether such employes are entitled to \$1.00 per day for expenses, in the absence of some showing that expenses were incurred.

An employe's place of residence is ordinarily a matter of his own choice and of no concern to his employer. It may be near or far removed from the place of work and it may be changed at will from time to time. On the other hand, places of employment, of the character here involved, are usually definite and certain. It seems reasonable to conclude, therefore, that when the parties provided in the Agreement for travel time "to and from the temporary assignment," they had in mind factors which could be readily understood and uniformly applied, rather than those which would lead to confusion and uncertainty. We think it must have been contemplated that employes would be compensated for travel between the places of regular and temporary assignments at the beginning and end of the continuous period or periods of such relief service. There is no basis for the conclusion that such employes are entitled to such travel time for each day of continuous service in the relief position. The arbitrary and unconditional allowance of \$1.00 per day "for expenses" during such period rebuts any such assumption. That allowance must have been intended to cover the extraordinary cost of personal maintenance, and it can hardly be supposed that the employe should be entitled to such benefit and, at the same time, be compensated for travel each day to and from his usual place of employment.

The rational application of the rule seems to be that the claimants' travel time is to be computed on the basis of that required to travel from and to their places of regular assignments, at the beginning and end of each uninterrupted period of temporary assignment, and that they are each entitled to \$1.00 per day as expenses incident to such emergency service. The facts are not in dispute and the sums due are merely a matter of calculation.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claim sustained as indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1944.