

Award No. 2786

Docket No. MW-2764

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA**

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

(a) That the Carrier violated provisions of the Agreement in effect by not furnishing extra gang foreman Lee Sutherland, Dallas Division, with transportation to travel between the tie up point of the extra gang of which he was in charge at Denison, Texas, to his home at Dallas, Texas, over week-ends;

(b) That Lee Sutherland be reimbursed and refunded in the amount of \$19.80 for fares paid on the Interurban Railroad traveling from Denison to his home at Dallas, Texas, and return to Denison over week-ends.

EMPLOYEES' STATEMENT OF FACTS: Extra gang foreman Lee Sutherland maintains residence and his family lives at Dallas, Texas. During the period from June 28th to August 21st, 1943 the extra gang of which he was in charge as foreman was stationed at Denison, Texas. The gang did not work on Sundays. The Carrier did not permit Sutherland to ride on its trains when going from Denison to his home at Dallas over weekends, making it necessary for him to ride on the electric suburban trains running between those two points, paying fares. There is a distance of 74 miles between Denison and Dallas.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 5, Article VI, of Agreement in effect reads:

"Employees will be allowed, when in the judgment of the management conditions permit, to make week-end trips to their homes. Free transportation will be furnished consistent with the regulations. Any time lost on this account will not be paid for."

Analyzing this rule one will come to only one conclusion, and that is that in case of employees who are working away from their homes or their home stations in outfit cars, when their services are not required over Sundays, they are free to do whatever they wish and may if they so desire go to their homes. It further provides that where employees thus go to their homes free transportation will be furnished by the Carrier consistent with the regulations.

In the claim before us, extra gang foreman Lee Sutherland was working at Denison, 74 miles away from his home at Dallas. The gang of which he was in charge did not work on Sundays, and thus unless he was afforded an

there is nothing in the rule that compels the railroad to operate service for the sole purpose of accommodating such employees in making weekend trips to their homes.

To illustrate, some of these employees may have lived in Ennis, Fort Worth or Hearne. They could have used their own automobiles to go home or such other transportation as may have been available to them to get to the closest point from which free transportation over this railroad was available, as for example, Dallas to Ennis, to Fort Worth, or to Hearne. In issuing free transportation to its employees, the Carrier does not by any stretch of the imagination assume the obligation of providing service to and from any and all points it may operate for the sole purpose of accommodating employees in whatever weekend trips they may desire to make, and it is difficult to believe that this Board will support any such contention.

CONCLUSION

Carrier has shown that this case has not been handled in the usual manner, as prescribed by the amended Railway Labor Act and required by the rules of the Board, and should be dismissed for lack of jurisdiction, and that on the merits, has shown that the claim is entirely without basis.

OPINION OF BOARD: At the outset we are confronted by Carrier's claim that the case is not properly before the Board, contending that no conference had been held on the property.

The record shows that the claim was submitted in writing to the proper official of the Carrier and that it was progressed by the Claimant up to the Superintendent on the Dallas Division and then to Mr. T. C. Montgomery, Manager of Personnel at Houston, Texas. Mr. Montgomery, in his letter of Feb. 3, 1944, declined the claim. The claim having been declined by the official representing the Carrier, it would be a useless thing to hold conference thereafter; not only that, but under the Act the Carrier has the same obligation to see that conferences are held as have the Employees. We hold that the claim is properly before this Board.

The claim is made on behalf of an extra gang foreman for violation of the provisions of the Agreement because the Carrier refused to furnish him with transportation between the tie-up point of the extra gang of which he was in charge at Denison, Texas, to his home at Dallas, Texas, over week-ends. The Claimant made the trips on another railroad and seeks a refund in the amount of \$19.80, the railroad fare that he paid to his home at Dallas and return over week-ends.

Rule 5 of Article VI is the only rule involved; we quote it:

"Employees will be allowed, when in the judgment of the management conditions permit, to make week-end trips to their homes. Free transportation will be furnished consistent with the regulations. Any time lost on this account will not be paid for."

No awards are cited and the sole question before us is the construction of the rule. The record shows that the Claimant had been furnished with an annual pass which permitted him to ride on passenger trains of the Carrier; there were no passenger trains on that portion of the line at the time the Claimant desired to go home and return. He sought permission to ride on freight trains; this was denied as under the Carrier's regulations, it was not permissible for Claimant to ride on freight trains. The rule provides that free transportation will be furnished consistent with the regulations. It was not consistent with the regulations to permit riding on freight trains under the circumstances here involved.

Rule 5 does not obligate the Carrier to provide passenger service or other transportation service for the purpose of transporting employees; it only provides that free transportation will be furnished consistent with the regulations.

Claimant was given an annual pass. He could ride on passenger trains. There is nothing in the rule that requires the Carrier to bear the expense for transportation when Claimant elected to use other than this Carrier's trains.

Clearly there was no violation of the rule and the claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.