

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Le Roy A. Rader, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of The Order of Railroad Telegraphers on The Pennsylvania Railroad that Article 4, Section 6, Part I is being violated in the refusal to allow meal expenses to the Agent at Dunkirk, Indiana, while required to go to Red Key, Indiana, to perform clerical work, which was formerly performed by a clerk.

EMPLOYEE'S STATEMENT OF FACTS: As of May 8, 1946, the force at Dunkirk, and Red Key, Indiana, was as follows:

- One (1) Agent
- One (1) Clerk, Symbol F-38-F
- One (1) Operator-Clerk
- One (1) Clerk, Symbol F-68-F, part time Dunkirk,
part time Red Key

Effective May 9, 1946, Clerical position F-68-F was abolished and the Agent required to perform all the duties at Red Key. It is necessary for him to be at Red Key for passenger train No. 115 at 10:30 A. M., and passenger train No. 116 at 2:19 P. M. Between these train schedules he performs other work at Red Key and takes his lunch hour.

From May 8, 1946 until November 1, 1946, the Agent was allowed his meal expenses while at Red Key, thereafter, this payment was denied.

Dunkirk, Indiana, Agency Station is designated by an astrisk (*) in the Rate Schedule and governed by the Rules of Exception, Article IV, Part I.

POSITION OF EMPLOYEES: There is an Agreement in effect between the parties to this dispute Rates of Pay and Working Conditions effective as of May 16, 1943, with adjustments in Rates since that date.

This Agreement is divided into Two Parts, Part I governing Agents and Assistant Agents, Part II governing Telegraph Department Employees. This case involves the provisions covered by Part I of the current Agreement.

Dunkirk, Indiana, on the Logansport Division, is an Agency Station, in the Wage Scale of that Division, Part I, of the current Agreement, with a Rate of Pay of \$271.05 per month (with adjustments), and designated by an asterisk (*), indicating the incumbent of the position is not required to perform routine duties during his entire tour of duty, with other exceptions as will be demonstrated later.

OPINION OF BOARD: The regular assigned position of the Agent is at Dunkirk, Indiana, and under his supervision in such positions are the agencies at Red Key and Mill Grove, Indiana. Under the Agreement the work at Red Key is performed by a clerk.

The Agency position at Dunkirk is a star position, as provided in Article III, Section 3, Part 1:

"No position now existing or hereafter established shall be designated by an asterisk (*) in the Rate Schedule if the employee filling such position is normally required, during his entire daily tour of duty, in addition to his Agency duties, to perform routine duties, usually performed by Clerical, Station or Telegraph Department employees."

The claim develops the fact situation, as follows: On May 9, 1946, Carrier abolished the clerical position at Red Key, Indiana, and the Agent at Dunkirk, Indiana, having this Agency under his supervision had to spend the hours between 10:30 A. M. and 2:19 P. M. at Red Key performing the routine office duties. During the period from May 9, 1946 to November 1, 1946, Carrier paid the Agent the expense incurred for his lunch each day that he was so situated. On November 1, 1946 the Carrier advised the Agent that such expense was not valid under the Agreement and discontinued paying the same. This claim resulted from the failure of the Carrier to continue payment for expense incurred for the Agent's lunch.

Claimant contends that the expenses so incurred should be paid under the Agreement, and on his behalf is cited the first interpretation placed on the fact situation, as it applies to the Agreement, by the Carrier and the additional fact that during the period of time in question the Agent was paid for auto mileage in traveling between Dunkirk and Red Key in the performance of these duties. Also, that the Agent under the latter interpretation placed on the Agreement by the Carrier could have returned to his home located at Dunkirk, had his lunch, returned to Red Key and charged auto mileage to the Carrier. Cited on behalf of Claimant is Article IV, Section 6 (a) of the Agreement:

"A regularly assigned employee shall be allowed any actual, necessary expense incurred in connection with his being assigned to work temporarily in a position other than his regular position."

The Carrier in stating its position on refusal to pay this expense item asserts that it has not received due and proper notice of this claim and makes technical objection to the jurisdiction of the Board in this matter. Among other grounds, that the claim is not one involving the interpretation or application of an Agreement covering the rules, rates of pay and working conditions, but on the contrary, amounts to an attempt to secure, by means of an award, a new and different agreement. That Agreement provisions cited on behalf of this claim have no application to the instant case; that the Agent was assigned the position at Dunkirk-Red Key-Mill Grove, Indiana. Therefore, when the Agent is performing service at Red Key he is just as much in his established headquarters as when performing services at Dunkirk or Mill Grove. Cited on behalf of Carrier is Award No. 1253.

It is the opinion of the Board in this claim that the jurisdictional question raised by the Carrier is not well founded and that the claim does present one involving the interpretation or application of the Agreement.

On the fact situation as applied to the Agreement, the claim will be sustained. Carrier contends that a different rule is to be applied in the case of the payment of auto mileage expense and that of expense incurred for lunch while the Agent was performing temporary duties at Red Key, Indiana. A careful review of all the facts presented as applied to the Agreement leads to the considered opinion that the Agent was assigned as such to Dunkirk, Indiana, and Red Key and Mill Grove were serviced by clerical employees, who were under the supervision of the Dunkirk Agent, Claimant herein.

That by reason of the abolishing of the Clerk's position at Red Key, a new and different situation arose with reference to the supervisory duties of the Agent at Dunkirk, which necessitated his performing service on a temporary basis. The provisions of the Agreement above set out cited on behalf of the claim give a valid and legal ground for the payment of the expense claimed.

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 Employees involved in this dispute are respectively carrier and employees 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1949.