Award No. 4305
Docket No. TE-4094

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 the Delaware, Lackawanna and Railroad Company that—

(a) The Carrier has violated and continues to violate the rules of the Telegraphers' Agreement when it refused and continues to refuse to allow daily free transportation in the form of highway automobile mileage and/or bus or other transportation charges between the designated home station of a relief position and the assignments included in said relief position and/or the headquarters of extra employes who perform relief service on assignments in regular relief position; and

(b) The Carrier shall now be required to retroactively (to the date the improper payments began) and currently pay to the employes listed in the Organization's Statement of Facts, viz:

A. A. Natoli	Cycle Position No. 2-a
N. E. Hummel	Cycle Position No. 7
E. J. Antonacci	Cycle Position No. 5
E. L. Haluska	Cycle Position No. 5
R. D. Wert	Cycle Position No. 7
R. D. Wert	Cycle Position No. 4
R. D. Wert	Cycle Position No. 6
Raymond Thomas	Cycle Position No. 6
F. B. Widdoss	Cycle Position No. 6
A. Favorito	Cycle Position No. 3-a

and other similarly affected employes, daily automobile mileage allowance and/or bus or other transportation charges. The retroactive payments to be less any allowances previously made.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties is in evidence. The rule (Article 8) involved bears an effective date of March 1, 1945.

Carrier's Bulletin S-823 of January 28, 1947 assigned A. A. Natoli to Cycle Position No. 2-a which includes service at Cortland (home station) on Sundays, Chenango Forks on Mondays and Tuesdays, Cortland on Wednesday and Thursdays and Chenango Forks on Fridays. Saturday is

extra employe was not entitled to free transportation under the Rest Day Rule when working on positions between December 20, 1946 and January 9, 1947 at the Rest Day of a regular incumbent of the position.

For reason above stated and those included in Carrier's conclusion in the entire claim, this claim should be denied.

Carrier has not violated the agreement of November 20, 1946, having reference to free transportation for regularly assigned relief employes, nor in connection with extra employes assigned to positions on the Rest Day of the regular incumbent of a position. Transportation for extra employes is set forth in Rule 27 of the May 1, 1940 Agreement.

Carrier has shown conclusively that allowances paid employes occupying regularly assigned relief positions have been made strictly in accordance with Article 1, Section 1(c) of the Agreement of November 20, 1946, which is controlling in the instant case before your Board.

Carrier has shown conclusively that extra employes assigned to positions on the Rest Day of the regular incumbent are handled under provisions of Rule 18 and 27 of the Agreement of May 1, 1940.

Claims for other similarly affected employes are indefinite and not properly before your Board.

The claim of the Employes submitted to your Board is a request for a new rule which has not been agreed upon by the parties involved in this and similar cases on the property. This, the Carrier contends, the Board is without power or authority to grant. As the U. S. District Court said in refusing to enforce an award of this Board in **Crowley v. D. & H. R.R. Co.**, 63 Fed. Supp. 164:

> "We are not at liberty to revise while professing to construe."
>
> * * * *
>
> "There is need of no high degree of ingenuity to show how the parties with little change of language **could have** framed a form of contract to which obligation would attach. The difficulty is that **they framed another.**
>
> The defendant is entitled to judgment dismissing the complaint."

For reasons set forth herein, the Carrier contends that the claims should be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: The Agreements covering this claim are the Telegraphers' Agreement of May 1, 1940, and the Memorandum of Agreement executed November 20, 1946. Section 1 (b) of the Memorandum of Agreement provides for the setting up of regular relief positions. Section 1 (c) make provision for transportation for relief positions; that section is as follows:

> "(c) Regular relief assignments will be concentrated as much as practicable, consistent with train service, and to avoid unnecessary travel. Free transportation for necessary travel in providing relief will be made available to relief employes. Employes who perform relief service under this agreement shall not be paid expense allowance or for deadheading. Turnovers between regular and relief employes shall be without expense to the Carrier.
>
> The free transportation for relief employes provided for herein shall be free transportation only between the stations at which the

relief employe performs service, unless otherwise agreed between the Management and the General Chairman."

The Carrier denies that the rule applies to Extra employes, and contends that extra employes were provided for by the deadheading rule, Rule 27, of the Agreement of May 1, 1940. The introductory language of Section 1 (c) speaks of "Regular relief assignments", and the next sentence speaks of free transportation for "relief employes"; nothing is said about "extra" employes. In Award 2132 this Board said: "* * * it is not advisable, even to reach a result which might appear equitable, to attempt to read into a rule something which is not there. * * *" It must be concluded that employes holding regular relief assignments only are covered by Section 1 (c).

The next matter to be determined is whether or not Section 1 (c), quoted above, provides for free transportation only on the initial and final trips, as contended by the Carrier, or whether it provides for free transportation from the home station to the distant station and back each day, as contended by Petitioners. The first paragraph of Section 1 (c) provides for free transportation for "necessary travel". That paragraph also states that relief employes should not be paid expense allowance or for deadheading. The denial of an expense allowance strongly supports the assumption that the employes would return to the home station each day, so as to make the return trip fall within the scope of "necessary travel". In Award 2604 this Board said that the unconditional allowance of a sum of money for expenses rebutted the assumption that a round trip each day was intended; but, as has been seen, no expense allowance is provided in this case.

The second paragraph of Section 1 (c) states that the free transportation should be only between the stations at which the relief employe performs service. Obviously, the word "between" as used here is ambiguous; it might as well as not have been intended to mean between the home station and the distant station, both ways, each day that the relief employe works at a distant station. The record indicates that this second paragraph was inserted in order to make it clear that the "free transportation" referred to was that involved after the employe reached the railroad station which had been designated as his "home station", and that the word "transportation" did not embrace travel from the house where the employe lives to the home station; thus, claims for travel from home to home station would not be allowed. It is the Opinion of this Board that Section 1 (c) requires that in the absence of available and reasonable rail transportation, relief employes are entitled to reimbursement of bus fares paid and/or automobile mileage from home station to distant location and return on each day that the employes are required to work a relief assignment other than at the home station. Automobile transportation must be computed on the basis of highway miles, not rail miles.

The claims for "other similarly affected employes" must be denied. The only claims properly before the Board for its consideration are those of named parties for specified dates and locations. In Award 906 this Board said: "The claim in this case should be restricted to the employes specifically named therein, since the correspondence shows that they were the only ones discussed in conference."

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 Section (c) of the Memorandum of Agreement to the extent indicated in the Opinion of the Board.

AWARD

Claims (a) and (b) sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 7th day of February, 1949.

Dissent to Award 4305, Docket TE-4094

The decision reached that Section 1 (c) entitles relief employes to reimbursement of bus fares paid and/or automobile mileage from home station to distant location and return on each day, etc., represents an extension of the Agreement between the parties rather than an interpretation of it and, consequently, is an Award not within the authority of this Board.

In addition, the meaning of the second paragraph of Section 1 (c) is not limited to that stated in the penultimate paragraph of the Opinion of Board which begins with the words: "The record indicates * * *."

(s) C. P. Dugan
(s) R. F. Ray
(s) A. H. Jones
(s) R. H. Allison
(s) C. C. Cook

Serial Number: 90

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 4305

DOCKET TE-4094

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: The Delaware, Lackawanna and Western Railroad Company.

Upon application of the representatives of the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the claim in Award 4305 it was asked that relief be given "retroactively (to the date the improper payments began) and currently * * *." The claim was sustained as to the eight named employes holding regular relief assignments; it was denied as to the claimants designated merely as "other similarly affected employes," and denied also as to "extra" employes.

In Award 4305, it was intended that employes Natoli, Hummel, Antonacci, Haluska, Wert, Thomas, Widdoss, and Favority be reimbursed retroactively for the loss suffered because of the Carrier's wrongful application of the rules, such reimbursement to be from the date when the improper payments began to February 7, 1949. It was further intended that the Carrier make proper payments currently after February 7, 1949 (which the Organization indicates that the Carrier did do).

The last paragraph of the "Opinion of Board" in Award 4305 had the sole purpose of denying the claims of "other similarly affected employes", claims not properly before the Board.

Referee Frank Elkori, who sat with the Division as a member when Award No. 4305 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of May, 1950.