Award No. 5157
Docket No. TE-5000

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company Line West of Buffalo (including Ohio Central Lines), and the Cleveland Union Terminals Company that:

1. W. D. Hartman, a regularly assigned relief employe working three days at Elkhart (headquarters) and three days at Laporte each week, shall be paid at time and one-half rate on the minute basis, beginning April 14, 1948, and thereafter as long as the practice continues, for the time in each instance he is required to arrive at Laporte in excess of two hours ahead of the starting time and/or remain at Laporte in excess of two hours after the quitting time of his assignments at Laporte; and

2. R. T. Struhs, an extra employe temporarily assigned to a regular relief position working three days at Elkhart (headquarters) and three days at Gary each week, shall be paid at time and one-half rate on the minute basis, beginning June 8, 1949, and thereafter as long as the practice continues, for the time in each instance he is required to arrive at Gary in excess of two hours ahead of the starting time and/or remain at Gary in excess of two hours after the quitting time of his assignments at Gary.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, effective July 1, 1946, except as noted, is in evidence; copies thereof are on file with the National Railroad Adjustment Board. Certain additions to this Agreement are reflected by Employes' Exhibits "A", "B" and "C" attached hereto and made a part hereof.

Item 1 of the claim. W. D. Hartman regularly occupied a regular relief position with headquarters at Elkhart. This relief position required three days service at Elkhart and three days service at Laporte each week. The distance between Elkhart and Laporte is 41.89 rail miles and 50 highway miles.

On the dates involved, neither "reasonable" rail transportation, bus transportation nor automobile transportation was available. To insure arrival at Laporte to protect the assignments at Laporte, it was necessary for Mr.

OPINION OF BOARD: Claimant Hartman occupied a regular relief position with headquarters at Elkhart, Indiana. His weekly assignment required three days work at Elkhart and three days at LaPorte which is approximately 50 miles distant. Claimant Struhs was an extra employe who was required to work a temporary vacancy in a regular relief position which had its headquarters at Elkhart and which required three days service at Elkhart and three at Gary each week. The claims are based on a failure of the Carrier to afford reasonable transportation between claimants' headquarters and the places where their duties are to be performed. The rules alleged to have been violated by the Carrier are Rules 3(a), 3(b) and 5, Mediation Agreement of May 9, 1947, which provide:

> "3. Except where the positions in a relief assignment are confined to one city, the carrier will afford free transportation, or the equivalent in the form of reimbursement of bus or other transportation fares paid, or automobile mileage allowances, to a relief employe between his designated headquarters and each of the other positions included in his relief assignment on such days as it is necessary for him to perform service on such other positions, on the following basis:
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> (a) Free rail transportation, if available and reasonable.
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> (b) If rail transportation is not available, or if it is not reasonable, the relief employe may elect to use either available and reasonable bus or other transportation, or his private automobile; if the former is used carrier will reimburse the relief employe for the fares so paid; if the latter, the relief employe will be allowed actual necessary highway miles at the mileage rate of 6 cents a mile for the first 300 miles or less, 5 cents a mile for the next 300 miles or less and 4 cents a mile for each mile over 600 in any calendar month.
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> "5. The word 'reasonable' as used herein means the transportation afforded will permit the relief employe to reach the relief location not more than two hours in advance of the starting time or to leave such location not later than two hours after quitting time."

It will be observed from an examination of the foregoing rules that the Carrier has obligated itself to provide free transportation to these claimants. Reasonable and available railroad transportation is defined by Rule 5 to be that which will permit the employe to reach his relief location not more than two hours before the starting time or to leave such location not more than two hours after quitting time. The record shows in the present case that the railroad transportation furnished was not reasonable or available within this agreed upon definition. Under such circumstances, the employe may elect to use other public transportation or to use his private automobile, in which event the Carrier will reimburse for fares paid of the former is used and pay mileage if the latter is used. This is the extent of the Agreement. If the employe elects to travel by rail, even though it be unreasonable, he is entitled to nothing under the Agreement except that it shall be without cost to him. It is only where the transportation is unreasonable or not available that other types of transportation may be used and reimbursement had in accordance with the expressed provisions of the Agreement. There is nothing in the Agreement for pay for waiting time in excess of two hours. The Agreement does not provide for any such compensation. There is no more reason for paying for waiting time in excess of two hours than there is for paying for the two hours. To hold otherwise would constitute a redrafting of the Agreement by inserting a provision for compensation for waiting time when no such subject was included in the Agreement or intended to have been included. This Board interprets agreements already made, it does not rewrite them. We cannot interpret into an agreement a matter to which the agreement does not even refer.

The result is that if transportation expense is not incurred there is no reimbursement due the employe under the rule, and, in any event, no agreement was made with reference to compensatory loss for waiting time after two hours as here claimed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of December, 1950.