Award No. 6180

Docket No. CL-6124

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) Carrier violated rules of the Clerks' Agreement governing the hours of service and working conditions of the employes when it failed to provide transportation for the regularly assigned occupant of traveling Relief Position No. 8, on Northern Division of the Carrier, to protect his assignment at Paola, Kansas, on July 15 and 16, 1951, and refused to compensate him for such days although available and willing to use any means of transportation provided by the Carrier.

(2) The regularly assigned occupant of Relief Position No. 8, Mr. J. D. Totman, be compensated for one day's pro rata time at rate of his relief assignment at Paola, Kansas, on each day July 15, and 16, 1951.

EMPLOYES' STATEMENT OF FACTS: Included in clerical force on Northern Division of the Carrier, there was established a traveling Relief Position No. 8 to relieve employes on positions in six or seven day service at Lamar, Mo., Thursday and Friday; Ft. Scott, Kansas, Saturday; and Paola, Kansas, Sunday and Monday, a five day position with Tuesday and Wednesday designated rest days; Paola, Kansas being considered as headquarters point, rate of the positions relieved at Paola, Kansas on Sunday and Monday of each week being $13.03 per day effective July 1, 1951.

This position was bulletined on April 30, 1951, as an indefinite vacancy and was assigned to Mr. J. D. Totman May 11, 1951. (See Employes' Exhibits 1 (a) and 1 (b). Mr. Totman was the assigned occupant of Relief Position No. 8 on July 15 and 16, 1951.

Since no definite travel instructions had been issued and no other means of transportation was provided or authorized for traveling between stations included in this assignment, it is the practice to use passenger trains 104-118 leaving Ft. Scott at 5:27 P. M., arriving at Paola 6:35 P. M. each Saturday evening. Other trains which might be used Sunday morning are train 112 leaving Ft. Scott 4:05 A. M., arriving Paola 5:40 A. M. and train 106 leaving Ft. Scott 5:30 A. M., arriving Paola 6:35 A. M.

It is also the Carrier's position that Rule 38 of the Agreement is not modified by Rule 51 (a) and that this rule requires a denial of the claim.

All data used in support of the Carrier's position have been made available to the employes and are made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The Organization claims that the Carrier violated the rules of the effective Agreement when it failed to provide transportation for the regularly assigned occupant of Traveling Relief Position No. 8, on Northern Division of the Carrier, to protect his assignment at Paola, Kansas, on July 15 and July 16, 1951. Compensation is asked on behalf of this Claimant for the two days in question because he was available and willing to use any means of transportation provided by the Carrier.

The Carrier and the Organization parties hereto were not able to agree on a "Travel Time, Road Work" Rule as contemplated by Article 2, Section 3 paragraph (g) of the National 40-Hour Work Week Agreement of March 19, 1949 to become effective September 1, 1949, reading:

"(g)—**Travel Time, Road Work, etc.**

Existing rules governing travel time, waiting time, road work, deadheading, and court attendance will remain unchanged. However, the inauguration of the 40-hour work week will require the creation of relief positions where none now exists. Appropriate rules to govern travel time for employes on such relief positions shall be negotiated by the representatives of the parties on the individual carriers."

The Carrier on May 16, 1950, submitted to the Organization a proposed rule on this subject, "Traveling Rest Day Relief Employes," and on May 28, 1950, Organization tentatively agreed in part to Carrier's proposal.

The Organization claims that because it tentatively agreed to Item (3) proposed by the Carrier and because Item (3) is identical with Section 2(c) of Decision No. 6 of the 40-Hour Week Committee, Item (3) is therefore binding on the parties in the resolution of this claim. This is a novel approach to contract law and if it were true either party would hesitate to make a proposal of any contract. A meeting of the minds by both parties on the proposal as a whole is necessary. There has never been a binding contract between these parties on the question of Traveling Time for Rest Day Relief Employes and this Board is without power to write one.

Proposed Item (3) reads as follows:

"(3) Where an employe is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located, the carrier will either provide transportation without charge or reimburse the employe for such transportation cost. ('Transportation' means travel by rail, bus or private automobile and 'transportation cost' means the established passenger fare or automobile mileage allowance where automobile is used.)"

The guarantee provision of Rule 51 reads:

"Rule 51. (a) Employes covered by Paragraphs one and two Rule 1 heretofore paid on a monthly or daily basis, shall be paid on a daily basis. Employes covered by Paragraph three Rule 1 shall be paid on an hourly basis. To determine the daily rate for monthly rated employes multiply the monthly rate by twelve and divide by 306.

"(b) Nothing herein shall be construed to permit the reduction of days for employes in Groups 1 and 2 of Rule 1 below six per week,

except that this number may be reduced in a week in which one of the seven Holidays specified in Rule 50 occurs to the extent of such Holiday. This does not apply to extra employes."

Under the proposed rule the Carrier was not obligated to furnish transportation for the employe.

This employe did not protect his assignment at Paola, Kansas. Due to a flood condition, trains were not running, buses were not able to use the highways. The Claimant did not have a car, but did own a motorcycle. The Organization states that there was a possibility that some roads were open and that the Carrier could have transported the Claimant to Paola from Fort Scott, or could have authorized him to use his motorcycle. From a careful reading of the effective Agreement and the proposed item (3), we can find no obligation on the part of the Carrier to transport or authorize transportation for this Claimant.

When the Claimant failed to protect his assignment, the Carrier did not violate the effective Agreement when it failed to compensate this Claimant for July 15 and July 16, 1951. The position was not blanked and the Carrier did not inform the Claimant that there would be no work for him due to the flood condition. This claim is distinguished from Award 3361 for the reason that in Award 3361 the Carrier notified the employes that there would be no work due to the heavy flood. The Board said this could not be done under the Guarantee Rule.

The Guarantee Rule provides only that the Carrier provide employment for the stipulated period. It does not require the Carrier to pay an employe who does not report for work. Award 4750.

The Claimant does not have a valid claim and it will 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 Employe involved in this dispute are respectively Carrier and Employe 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1953.