Award No. 6596
Docket No. TE-6479

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway; that

1. The Carrier is in violation of the terms of the Agreement between the parties when it fails to pay the occupant of Relief Position No. 19, home station Rincon, New Mexico, and automobile mileage allowance based on the highway mileage, round trip, Rincon, New Mexico to Silver City, New Mexico, on the days that he works at Silver City, New Mexico; and,

2. The Carrier shall now pay such occupant the difference between the amount allowed him and the amount due him, computed on the round trip mileage used between the points named in Paragraph 1.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of June 1, 1951 between the parties to this dispute is in evidence. There is in existence a relief position identified as Relief Position No. 19 furnishing rest day relief service at three stations, namely, Rincon, Silver City and Engel, New Mexico. The occupant of this relief assignment has headquarters at Rincon and is assigned to perform relief work at the three stations on the following schedule:

Silver City Telegrapher-Cashier
9:00 A. M.—6:00 P. M. Saturday and Sunday
Rincon Telegrapher-Clerk
3:00 P. M.—11:00 P. M. Monday
Engel Telegrapher-Clerk
11:45 P. M.—7:45 A. M. Tuesday and Wednesday

The rest days of this relief position are Thursday and Friday.

There is neither bus nor rail service available to the relief employe which would permit him to protect his 9:00 A. M. assignment at Silver City, and he is compelled to use his automobile. There is a train leaving Silver City at 6:00 P. M. due to arrive at Rincon at 10:40 P. M. however, since claimant has been compelled to drive his automobile to Silver City, he must

Finally, it must also be remembered that Section 10-d-6 provides in part that:

> "* * * such an employe who desires to use his private automobile in lieu of rail or highway bus transportation between such stations will be authorized to do so under the terms of these Sections 10-d, * * *"

In the instant case, in connection with the going trip Rincon to Silver City, for which neither rail nor highway bus transportation was available within the two hour limit, the use of the claimant's private automobile **was authorized for the going trip by the Carrier under Section 10-d-6,** which provides for payment of the rate per mile authorized by the Carrier for the use of his automobile under such circumstances, and which was the amount paid the claimant. **On the return trip train service was available within the two hour limit, and the use of the claimant's private automobile was not authorized** by the Carrier under the terms of Section 10-d-6; hence the mileage rate referred to therein **is not applicable in both directions as contended by the Employes, but is only applicable to those portions of the trips on which the use of the claimant's automobile was authorized by the Carrier under the terms of Section 10-d-6.**

It will accordingly be apparent from the foregoing discussion and analysis of Sections 10-d-2, 3, 4, 5 and 6 of the current Telegraphers' Agreement that the Employes' interpretation of Section 10-d-6, would, if sustained, serve to nullify the provisions of Sections 10-d-2, 3, 4 and 5 and would have the effect of amending or otherwise revising the Agreement rules in effect between the parties hereto, which the Third Division has repeatedly recognized it is prohibited from doing by the terms of the amended Railway Labor Act. Insofar as concerns the instant case, the Employes' position would, if sustained, have the effect of nullifying the provisions of Article III, Section 10-d-2, which expressly contemplates that a relief employe will not be entitled to any allowance for the use of his automobile in instances, such as that involved in the instant dispute, where rail transportation is available for his use on the return trip to his home station, he is furnished free transportation thereon and voluntarily elects to make use of his automobile in lieu thereof. Expressed in another manner, there is no rule in the current Telegraphers' Agreement which requires the payment of any allowance to a relief employe for the use of his automobile in instances where rail transportation is available for his use and **he does not elect to make use thereof.**

In conclusion, the Carrier respectfully reasserts that the Employes' claim in the instant dispute is entirely without support under the Agreement rules and should be denied in its entirety.

All that is contained herein is either known or available to the Employes or their representatives.

OPINION OF BOARD: This claim presents the same questions involved in Award 6595.

For the reasons stated in Award 6595 the claim should 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 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1954.