

Award No. 11647
Docket No. CL-11211

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
ILLINOIS CENTRAL RAILROAD COMPANY

CASE NO. 1

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

(a) Carrier violated the Clerks' Agreement at Centralia, Illinois, when on September 9, 1957 and continuing through September 13, 1957, it refused to allow Clerk B. J. Sloat automobile mileage from Centralia, Illinois, to DuQuoin, Illinois, while filling a vacancy at DuQuoin.

(b) Mr. Sloat be compensated at the rate of 8 cents per mile for 84 miles per day for September 9, 10, 11, 12 and 13, 1957.

CASE NO. 2

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

(a) Carrier violated the Clerks' Agreement at Centralia, Illinois, when on September 8, 12 and 15, 1957, it refused to compensate Clerk Marie Wilson for train fare to Carbondale and Cairo, Illinois, and auto mileage of 112 miles to Carbondale while filling vacancies at those points.

(b) Marie Wilson be compensated \$3.18 for train fare on September 8, 1957; \$6.08 for train fare on September 12, 1957; \$8.96 for 112 automobile miles at 8 cents per mile on September 15, 1957.

EMPLOYEES' STATEMENT OF FACTS—CASE NO. 1

(1) Extra Clerk B. J. Sloat, Centralia, Illinois, was required to work the week September 9 to 13, 1957, inclusive, on a position at DuQuoin, Illinois, a distance of 42 miles, during the vacation of the regular incumbent. The starting time of the position was 7:00 A. M. and in order to arrive at DuQuoin in time to fill the position, it was necessary that he ride train No. 3 departing from Centralia at 1:05 A. M. or to drive his automobile. Train No. 3 ar-

rived at DuQuoin at 1:51 A.M., which would have meant a wait of five hours and nine minutes before going to work with no opportunity for rest. The quitting time of the position was 4:00 P.M. and the first available train returning to Centralia was No. 2, which departed from DuQuoin at 6:56 P.M. and arrived at Centralia at 7:32 P.M., which would have necessitated a wait of two hours and thirty-two minutes.

(2) Sloat, confronted with these circumstances, chose to use his automobile. He asked that he be allowed mileage, but Carrier refused.

September 30, 1957, claim was filed with Master Mechanic Jeffrey for Sloat. See Employees' Exhibit No. 1.

October 24, 1957, claim was declined by Master Mechanic Jeffrey on the premise that there was no violation of the agreement. See Employees' Exhibit No. 2.

November 12, 1957, claim was appealed to Superintendent of Motive Power Welsch. Employees' Exhibits Nos. 3 and 4.

January 3, 1958, claim was appealed to Manager of Personnel R. E. Lorentz. Employees' Exhibits Nos. 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, 5-G, 5-H, 5-I, 5-J and 5-K.

The dispute was discussed with Management in conference on June 7, 1958, and November 5, 1958, but not composed.

EMPLOYEES' STATEMENT OF FACTS — CASE NO. 2:

(1) Extra Clerk Marie Wilson, Centralia, Illinois, was required to fill vacancy on position of roundhouse clerk at Carbondale, Illinois, hours 11:00 P.M. to 7:00 A.M. on September 8, 1957. Train No. 9 was available but did not arrive at Carbondale until 10:47 P.M. This train is frequently late. Even if on time, Mrs. Wilson would have had only thirteen minutes in which to get to the roundhouse, which is approximately one mile from the station. Train No. 5 departed from Centralia at 8:41 P.M. and arrived at Carbondale at 9:32 P.M. Employees are not permitted to ride on passes on this train between Chicago and Memphis, Tennessee. The next closest arrival at Carbondale was Train No. 1 at 12:33 P.M. Mrs. Wilson chose to pay her fare of \$3.18 on Train No. 5 rather than be late in protecting her assignment or to wait from 12:33 P.M. to 11:00 P.M. to go to work.

September 12, 1957, Mrs. Wilson was required to fill a similar position, hours 11:00 P.M. to 7:00 A.M., at Cairo. She again paid her fare of \$6.08 on Train No. 5 which arrived at Cairo at 10:48 P.M. The next nearest arrival was Train No. 1 at 1:58 P.M.

September 15, 1957, Mrs. Wilson was again required to work the 11:00 P.M. to 7:00 A.M. roundhouse clerk position at Carbondale. Due to Carrier's refusal to refund train fare for the two above mentioned dates, she drove her automobile to and from Carbondale.

(2) October 25, 1957, claim was filed with Master Mechanic Jeffrey for Wilson. See Employees' Exhibit No. 6.

October 31, 1957, claim was declined by Master Mechanic Jeffrey. See Employees' Exhibit No. 7.

OPINION OF BOARD: Two separate cases are involved presenting similar issues for determination. Each claim is for automobile mileage expense allegedly due to Claimants who, on different dates and at separate places, were assigned to fill temporary vacancies. Both Claimants were extra clerks.

Petitioner contends that Carrier violated Rule 44 of the Agreement, which provides as follows:

"ROAD SERVICE—TEMPORARY ASSIGNMENT

"(a) Employees not regularly assigned to road service, who are temporarily required to perform service away from their headquarters which necessitates their traveling, shall be allowed necessary expenses while away from their headquarters, and will be paid pro rata for any additional time required in traveling to and from the temporary assignment, except that where lodging is furnished and paid for by the railroad no additional compensation will be allowed unless actually required to perform service in excess of eight (8) consecutive hours, exclusive of meal period.

"(b) The foregoing paragraph shall not apply to an employee temporarily filling a position during the absence of the employee regularly assigned to road service, or pending a permanent assignment as provided in Rule 11, but in such cases, the basis of compensation shall be the same as for the regular employee except as provided in Rule 50."

Carrier argues that the expenses claimed are not "necessary" expenses contemplated by Rule 44; that Rule 44 applies only to regular employees and was never intended nor applied to extra employees.

Rule 44 does not specifically include or exclude extra employees. It cannot be gleaned from the language whether the parties intended to include or exclude the allowance of "necessary expenses" to extra employees. In the absence of clear and unambiguous language, it is necessary to examine the custom and practice to determine the intent of the parties.

The record contains thirty-five affidavits from supervisory and non-supervisory employees showing that for a period of about thirty-five years "necessary expenses" as contemplated in Rule 44 were never paid to extra employees. This fact is nowhere rebutted by Petitioner. Such past practice has given meaning and intent to Rule 44 which we may not modify. A change in such accepted meaning and intent may be accomplished only through the process of collective bargaining as provided in the Railway Labor Act.

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

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Both Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1963.