

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Western District, that:

1. The Carrier violated Article 19, Section 2(e) on June 27, 1957 when in ordering G. K. Campbell, agent-operator at New Carlisle, Indiana to attend a hearing at Chicago, Illinois on July 1, 1957 at 9:00 A. M., it failed to designate the trains on which he was to travel to and from the hearing.

2. The Carrier violated Article 19, Section 4, of the agreement between the parties when it refused to pay G. K. Campbell \$13.00 actual expenses incurred while he was away from his place of employment attending hearing at Chicago on July 1, 1957.

3. The Carrier be required to pay G. K. Campbell the \$13.00 involved.

EMPLOYES' STATEMENT OF FACTS: Article 19 of the Agreement between the parties reads:

"ARTICLE 19

Attending Court, Investigations, Examinations, etc.

Section 1 — Attending Court, Inquests, etc.

Regular employes required by orders of the Company to attend court, inquests, or other requirements of a like nature will be paid for working time lost or time consumed at the pro rata rate of the position occupied; in the case of an extra employe, the minimum hourly rate on the seniority district will apply -- the minimum allowance in such case to be one hour. In all cases actual necessary expense incurred

CONCLUSION

1. Carrier has shown that Section 4 — Expenses, of Article 19, was intended to apply only to pay for necessary actual expenses arising under Section 3 of that Article and does not apply to cases coming under Section 2, such as the instant case.
2. Claimant's use of his automobile was not authorized, nor was it used "on company business."
3. Automobile mileage allowance is not a necessary actual expense under Article 19, Section 4.
4. Article 19, Section Two, is applicable to this claim and Section 2 (h) nullifies any Carrier obligation under Section 2 in this case.
5. The automobile mileage allowances provided for in the applicable agreement do not support this claim.
6. This claim is a request for a new interpretation of "necessary actual expenses" which would require the payment of automobile mileage allowance to employees subject to Article 19 irrespective of other means of transportation available.
7. A prior award of the Third Division has denied a similar claim under an agreement worded the same as Article 19.

All evidence and dates set forth herein have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier directed Claimant to attend an investigation in Chicago. Carrier did not comply with that part of Article 19, Section 2 (e) of the effective Agreement which provides in part:

" . . . Management shall designate the trains on which he will travel to and from the investigation."

This provision was violated before Claimant's guilt was determined in the matter under investigation. Therefore, we cannot agree with Carrier's interpretation that Carrier is absolved of violation by Article 19, Section 2 (h) of the Agreement which provides:

"Nothing contained in this Section 2 shall be considered applicable to any employe who is proven guilty in the matter under investigation."

Carrier's contractual liability for violation of Article 19, Section 2 (e) above quoted, is included in, and determinable under, the provisions of Article 19, Section 4 of the Agreement:

"Necessary actual expenses while away from place of employment will be paid by the Company." (Emphasis ours.)

It appears of record that Claimant could have made the necessary trip by train; and that Claimant being the Agent-Operator at New Carlisle, In-

diana, knew or should have known the train schedule. We take judicial notice that Claimant could have made the trip by train without expense. Claimant was under a duty to minimize the amount of damages; his use of his automobile for travel was not necessary, and was at his own expense.

Accordingly the claim for \$10.40 for automobile mileage expense and \$1.30 for automobile parking fees must be denied.

Claim is also made for \$1.30 for the expense of Claimant's lunch; this was a necessary actual expense while Claimant was away from his place of employment in connection with the investigation. Carrier was obligated to pay Claimant \$1.30 for lunch expense under Article 19, Section 4 of the Agreement, above quoted. Therefore, the claim is sustained in the total amount of \$1.30. (Had there been no actual compensatory damage involved under Section 4, an award of nominal damages of \$1.00 for violation of Section 2 (e) would have been proper.)

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 Agreement was violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1963.