

Award No. 12296
Docket No. TE-13582

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

Claim No. 1

1. Carrier violated provisions of the Telegraphers' Agreement as shown in Memorandum of Understanding dated January 11, 1949, pages 43, 44, 45 and 46 of current Agreement, when it declined to allow the proper amount of compensation for travel pay expenses incurred by the use of private automobile by claimant in protecting his assignment as rest day relief employee on Rest Day Relief Position No. 21, Asheville Division, that has an assignment as shown in the facts of this claim, when travel by private automobile was necessary for the reason no available train or bus service. Carrier allowing only 885 miles \$97.35, when it was necessary to travel 2170 miles at an expense of \$238.70.

2. Carrier shall further compensate or reimburse Claimant F. O. Ritchie by paying him the difference between \$238.70, amount claimed, and \$97.35, amount allowed by Carrier. Total to be paid Claimant F. O. Ritchie \$141.35, for the aforesaid violation of the Telegraphers' Agreement.

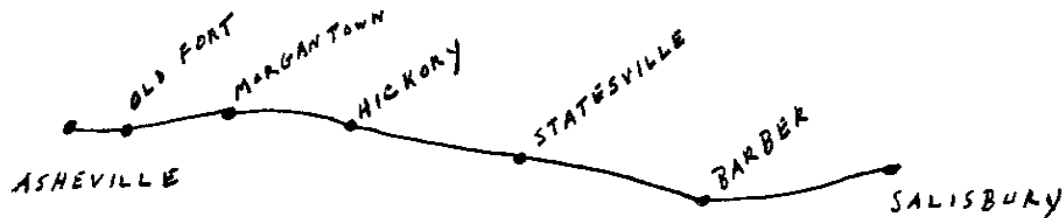
Claim No. 2

1. Carrier violated provisions of the Telegraphers' Agreement as shown in Memorandum of Understanding dated January 11, 1949, pages 43, 44, 45 and 46 of current Agreement, when it does not allow the proper amount of compensation for travel expenses incurred by the use of private automobile by claimant in protecting his assignment as rest day relief employee on Rest Day Relief Position No. 21, Asheville Division, that has an assignment as shown in the facts of this claim, when travel was necessary by private automobile for the reason no available train or bus service, during the months of February and March 1961. Claimant, in protecting his assignment, must use his private automobile for transportation in all subsequent months, there-

fore, this is a continuing claim for all months subsequent to February and March 1961.

2. Carrier shall further compensate or reimburse Claimant F. O. Ritchie by paying him the difference between \$202.40, amount claimed, and \$88.00, amount allowed by Carrier for the month of February 1961, and by paying him the difference between \$213.40, amount claimed, and \$99.00, amount allowed by Carrier during the month of March 1961, further, it shall compensate Claimant F. O. Ritchie for all travel expenses in using private automobile for transportation to protect his assignment for all months subsequent to February and March 1961, in accordance with the Memorandum of Understanding herein referred to.

EMPLOYEES' STATEMENT OF FACTS: In order to understand the situation and the various locations, the Employees present this brief sketch of the territory involved:



	Miles
Salisbury	0.0
Barber	11.4
Statesville	25.6
Hickory	57.6
Morganton	78.5
Old Fort	111.1
Asheville	141.0

Claimant F. O. Ritchie is the claimant in both Claims 1 and 2. The only distinction between Claim 1 and Claim 2 is that in Claim 1 the payment or reimbursement is claimed for only one month of January 1961, while Claim 2 is for February and March 1961 and all subsequent months.

During the period of these claims, F. O. Ritchie was regularly assigned to Rest Day Relief Position No. 21 located on the Asheville Division and assigned to work as follows:

Friday	Barber, No. Car.	First Shift	7:00 AM to 3:00 PM
Saturday	Statesville, No. Car.	First Shift	8:00 AM to 4:00 PM
Sunday	Hickory, No. Car.		4:00 PM to 12 MID.
Monday	Morganton, No. Car		3:00 PM to 11:00 PM
Tuesday	Old Fort		12:00 MN to 8:00 AM
Wednesday	Rest Day		
Thursday	Rest Day		

Headquarters for this relief position Barber, North Carolina.

terpret the applicable rules of the parties' agreement as they are written. It is not our privilege or right to add thereto. See Award 4435."

In Third Division Award 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employees arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance." See Awards 3523, 6018, 5040, 5976."

The Board, having heretofore recognized its limitations under the law and that it is without authority to grant new rules or modify existing rules such as here demanded by the ORT, should deny these claims.

Without prejudice to carrier's position that both the claims are entirely without basis and should be denied, carrier respectfully calls the Board's attention to the fact that during the handling of "Claim No. 2" on the property, carrier refused to recognize the claim as being continuing. The Assistant Director of Labor Relations so informed the General Chairman and advised him that "claims for dates subsequent to March 1961 must be presented in the usual manner , as required by Article V, Section 1 (a) of the August 21, 1954 Agreement." (See page 6 of carrier's submission). Carrier necessarily took that position because it would be impossible for anyone to predict how long claimant would remain on the assignment in question, how often he would use his automobile or what his mileage would be each month. Furthermore, section (4) of the memorandum of understanding dated January 11, 1949, previously quoted herein, requires that the employee submit, at the end of each month, an itemized statement on proper form showing accrued automobile mileage.

The evidence of record does not support petitioner's contention that the agreement was violated, nor does it support the claims for pay. For the reasons set forth herein, the claims should be denied in their entirety, and carrier respectfully requests that the Board so decide.

OPINION OF BOARD: The issue here is identical with that disposed of in Award No. 12293, involving these same parties. That Award being controlling, the claim 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 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 between the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.