

Award No. 13370
Docket No. TE-12827

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS TERMINAL RAILROAD

STATEMENT OF CLAIM: Claim of the Committee of The Order of Railroad Telegraphers on the Illinois Terminal Railroad, that:

1. (a) Carrier violated the Agreement between the parties when it failed and refused to compensate R. W. Merriman for dead-heading (or traveling) from Cavender, Illinois to Carlinville, Illinois and return on August 22, 23, 24, 25, 26, 27, 29, 30, 31, 1960.

(b) Carrier shall compensate R. W. Merriman in the amount of \$1.96 on each date set forth above, for a total of \$17.64.

2. (a) Carrier violated the Agreement between the parties when it failed and refused to compensate R. W. Merriman for dead-heading (or traveling) from Cavender, Illinois to Carlinville, Illinois and return on September 1, 2, 5, 6, 7, 8, 9, 1960 and from Cavender, Illinois to Champaign, Illinois and return on September 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 1960.

(b) Carrier shall compensate R. W. Merriman in the amount of \$1.96 on September 1, 2, 5, 6, 7, 8, 9, 1960, and in the amount of \$17.50 on September 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 1960, for a total of \$311.22.

3. (a) Carrier violated the Agreement between the parties when it failed and refused to compensate P. H. Davison for dead-heading (or traveling) from Mindale, Illinois to Illiopolis, Illinois and return on September 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 1960, and from Illiopolis, Illinois to Mechanicsburg, Illinois and return on September 12, 21, 1960.

(b) Carrier shall compensate P. H. Davison in the amount of \$9.38 on each date set forth above, and in addition \$1.54 on September 12 and 21, 1960, for a total of \$134.40.

4. (a) Carrier violated the Agreement between the parties when it failed and refused to compensate P. H. Davison for dead-heading (or traveling) from Mindale, Illinois to Mackinaw, Illinois and return on September 26, 27, 28, 29, 30, October 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 1960.

(b) Carrier shall compensate P. H. Davison in the amount of \$2.80 on each date set forth above for a total of \$50.40.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 16, 1957, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The rule which controls this dispute is Rule 9 of the Agreement, which reads as follows:

"RULE 9. DEADHEADING

Regular, relief and extra employees required to travel by any means whatsoever will be allowed seven cents (7c) per mile from assigned home terminal to place where work is to be performed and back to home terminal daily."

CASE NO. 1

Extra Employee R. W. Merriman was instructed to and did relieve the agent at Carlinville, Illinois on August 22, 23, 24, 25, 26, 27, 29, 30 and 31, 1960. Carlinville is on Division No. 1. The assigned home station on Division No. 1 is Cavender, Illinois. Merriman turned in, in the usual manner, travel time of \$1.96 per day for a total of \$17.64, which was not allowed.

CASE NO. 2

Again Extra Employee R. W. Merriman was used for relief purposes and relieved the agent at Carlinville on September 1, 2, 5, 6, 7, 8 and 9, 1960, then relieved the agent at Champaign, Illinois on September 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30, 1960. Again he submitted his request for travel time pay in the usual manner at the rate of \$1.96 on the dates he worked at Carlinville, and \$17.50 on the dates he worked at Champaign, for a total of \$311.22. The travel time was not allowed.

CASE NO. 3

Extra Employee P. H. Davison was required to relieve the agent at Illiopolis on September 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23, 1960, and during his tour of duty at Illiopolis on September 12 and on September 21 was required to travel to Mechanicsburg, Illinois and return to Illiopolis. Illiopolis is on Division No. 3. The assigned home station for Division No. 3 is Mindale, Illinois. Davison submitted the usual request for travel time pay at the rate of \$9.38 on each date and in addition \$1.54 on September 12 and 21 to cover the round trip to Mechanicsburg on those dates. The travel time was not allowed. However, the Carrier did agree to pay the travel time between Illiopolis and Mechanicsburg on the condition that he would withdraw the request or claim for the travel time between Mindale and Illiopolis.

Chairman in his letter of December 26 to the Supervisor of Personnel (ORT Exhibit 8), calls the Carrier's attention to these prior settlements of similar claims.

Rule 9 of the Agreement is clear and does not lend itself to more than one interpretation. It has been applied as written from its effective date until the claims which are embodied in this dispute arose. It is patent that the Carrier is attempting to abrogate this rule, not in the proper manner, but by refusal to comply. The non-controversial facts and the clear-cut governing rule require a sustaining award.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The above claims are based on furloughed employees filling vacation vacancies, and the contention of the organization that in filling these vacancies, the employees should be paid car mileage in accordance with Article 9 of the Agreement between the parties. The agreement between the parties effective December 16, 1957, copy of which has been filed with your Honorable Board, and is by reference made a part of this submission.

Illioopolis and Mackinaw, Illinois are located in Seniority District No. 3 and Carlinville and Champaign, Illinois are located in Seniority District No. 1. Vacation relief at these points have in the past several years been filled by agents that have been furloughed.

POSITION OF CARRIER: The disposition of these claims hinges on Rule 9 of the current agreement, which rule provides for travel mileage by private car at the rate of 7 cents per mile when a regular, relief or extra employee is required by the company to travel by private car from his place of employment, or terminal, where an extra board is maintained, to another point where work is to be performed. The above claimants, Merriman and Davison, were furloughed employees, not regular, relief or extra employees. They certainly were not attached to any extra board.

When it became known that we would need vacation relief at the above points, Merriman and Davison, furloughed employees, were contacted, and they agreed to work the vacation relief at Mackinaw, Illioopolis, Carlinville and Champaign. The records will show that Merriman and Davison were not forced on these vacation relief jobs in question; they agreed to work them. They knew the conditions and filling same would ensue driving their cars from their homes to the above points.

It is the position of the carrier that the above claims are without merit and should be denied in their entirety. Claimants were furloughed employees and, therefore, Rule 9 of the current agreement has no application.

OPINION OF BOARD: This dispute involves the use of employees to relieve agents. The Carrier contends that the employees so used were furloughed employees and the Petitioner contends that they are extra employees.

Rules 9 and 16 (d) are controlling in this dispute.

"RULE 9. DEADHEADING

Regular, relief and extra employees required to travel by any means whatsoever will be allowed seven cents (7c) per mile from

assigned home terminal to place where work is to be performed and back to home terminal daily."

"RULE 16. REDUCTION IN FORCE

(d) Furloughed employees who have indicated their desire to be used for such extra and relief work will be called in seniority order for this service. Such employees will be placed on the extra list in seniority order and used in accordance with the rules of this agreement."

The furloughed employees became extra employees under Rule 16(d) when they wrote the Carrier and complied with Rule 16(c).

We find that the claimants herein were required to travel as set forth in Rule 9. The Carrier and the Organization had agreed upon the home terminals.

Although there is some mention of the Time Limit Rule, it is not involved in this dispute.

We find the position of the Organization is well taken.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.