

Award No. 15381
Docket No. TE-13591

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Eastern Lines)

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

1. The Carrier violated the terms of the Agreement between the parties when, from April 17 to 28, 1961, it failed or refused to allow Student Wire Chief D. R. Shepard \$3.00 per calendar day in addition to his regular rate when on vacation while used at Chicago, Illinois, away from his home point.

2. Carrier shall now be required to compensate D. R. Shepard for \$3.00 pay each calendar day from April 17 to 28, 1961, a total of \$36.00.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951, and a Memorandum of Agreement signed at Chicago, October 19, 1945, are in evidence. The letter will be hereinafter referred to as the Student Wire Chief Agreement.

On or about January 26, 1961, Student Wire Chief D. R. Shepard, with home point at Topeka, Kansas, was required by the Carrier to report to Chicago, Illinois, away from his home point, and was used to fill Wire Chief Positions at that location.

While protecting a Wire Chief Position at Chicago, Illinois, Student Wire Chief Shepard received his annual vacation from April 16 to 27, 1961, inclusive.

After observing his vacation, Mr. Shepard continued protecting Wire Chief Positions at Chicago until June 6, 1961.

In accordance with Section 8 of the Student Wire Chief Agreement, Mr. Shepard was entitled to \$3.00 per calendar day for expenses in addition to his regular rate while at Chicago away from his home point.

However, from April 16 to 27, 1961, when he received his vacation, Mr. Shepard was denied the payment of \$3.00 per calendar day.

'daily compensation' nor a 'daily rate' as those terms are referred to in Article 7-(A) and (B) of the December 17, 1941 Vacation Agreement, which were cited by the District Chairman, but is, as reflected by the very language of Item (8), an allowance for expenses incurred while away from home station 'for training purposes' and not while absent on vacation.

Yours truly,

/s/ L. D. Comer"

"February 1, 1962
25K61-130

Mr. L. D. Comer, Asst. Vice Pres.
The AT&SF Railway Company
Railway Exchange Building
Chicago 4, Illinois

Dear Sir:

Please be referred to your letter file 135-73-B-13, September 28, 1961, concerning claim in behalf D. R. Shepard, for \$3.00 each day on twelve days in April 1961.

Since the \$3.00 a day as provided in the Student Wire Chief Agreement is only to assist the Student Wire Chief for the additional expenses incurred account away from his home point and does not cover actual expenses incurred, I am sure you will agree that, although on vacation, he was still the occupant of the Wire Chief position at Chicago and entitled to this remuneration in accordance with the Student Wire Chief Agreement. This is to advise that your decision is not satisfactory and this case will be appropriately appealed.

Yours truly,

/s/ D. A. Bobo
General Chairman"

OPINION OF BOARD: Claimant, a Student Wire Chief, performed service for Carrier away from his home station for approximately five months during 1961 as a temporary Wire Chief in Chicago, Illinois. During such temporary service, Claimant was relieved for his annual vacation and was paid regular hourly wages equal to the wages paid on the assignment he filled. However, Carrier refused to pay Claimant an allowance of three dollars (\$3.00) per calendar day for expenses in addition to the regular rate of pay during the period that he was on vacation.

Petitioner contends that an expense allowance, applicable to an assignment away from an employee's "home point," must be considered as a part of the "daily compensation" for the purpose of computing vacation compensation under Article 7(a) of the Vacation Agreement.

Carrier contends that the expense allowance in dispute is only payable while an employee is away from his home station and actively performing the duties of a temporary assignment in the Wire Chief Classification. Carrier maintains that Claimant, while on vacation, was not in the active service of

the Carrier; was not necessarily away from his home station; and was not in any way being used in the Wire Chief Classification.

The pertinent provisions of the applicable Agreements are as follows:

"MEMORANDUM OF AGREEMENT

(Student Wire Chief Agreement)

8. Student Wire Chiefs, while away from home station for training purposes, will be allowed three dollars (\$3.00) per calendar day for expenses, in addition to their regular rate. (Emphasis ours.)

* * * * *

11. A Student Wire Chief temporarily used on a position in the Wire Chief class, due to the absence of the regular incumbent, will be paid the regular rate of such position."

Article 7(a) of the Vacation Agreement reads:

"An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Petitioner relies in part upon the following interpretation placed on Article 7(a) by the parties to the Vacation Agreement on June 10, 1942.

"This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

In accordance with the above quoted interpretation, Special Board of Adjustment No. 174 found that the regular incumbent of a traveling Relief Clerk position was entitled to be paid during his vacation period for "traveling and waiting time" as part of the "daily compensation" paid for the assignment under Article 7(a) of the Vacation Agreement. The rationale of the Special Board was that the employe's time in "traveling and waiting" was part of the assignment, which was characterized by the parties as "working time."

In the instant dispute, the applicable agreement provides for an allowance of three dollars (\$3.00) per calendar day for expenses while an employe is away from his home station on behalf of the Carrier. Such an allowance constitutes a fixed per diem payment in lieu of reimbursement for actual expenses incurred by employes while away from their home stations and is in no way related to the actual duties of such employes or the time spent by them in performing their assignments. The per diem allowance is described in the applicable rule as being in addition to the regular pay of the position while an employe is away from his home station on Carrier's business. Moreover, the allowance is payable to the incumbent of the position and Carrier was required to pay Claimant's relief three dollars (\$3.00) per calendar day for expenses while Claimant was on vacation. In this connection, it should be noted that Rule 12(a) of the Vacation Agreement in part provides as follows:

" . . . a Carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation . . ."

Petitioner cites a previous instance where Carrier approved a per diem expense payment to another employee while on vacation under similar circumstances. However, Carrier avers that such allowance was made through error and constitutes an isolated settlement which does not overcome a long standing practice of refusing such payments. We find that this single exception by Carrier to an established practice of refusing such allowances should not be considered a binding precedent. Award 9946.

The controlling language of the applicable agreement provides a fixed per diem expense allowance in addition to the regular remuneration paid for services, while such services are being performed away from an employee's home station.

The per diem allowance is paid in lieu of reimbursement for actual expenses incurred by such an employee and connotes the repayment of money already expended by him. While on vacation, employees covered by the agreement are not incurring expenses arising out of service for the benefit of the Carrier, and therefore, are not entitled to a per diem expense allowance in the absence of specific contractual authority. Accordingly, we must deny the claim.

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 not violated.

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 1967.