

Award Number 17485

Docket Number TE-14995

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

G. Dan Rambo, Referee

**PARTIES TO DISPUTE:**

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

**SOO LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Soo Line Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties by failing and refusing to allow the employees free transportation traveling to and from assignments contained in regular relief positions.
2. Carrier shall reimburse J. M. Vogt, occupant of relief position No. 33, in the amount of \$27.44 (392 miles at 7 cents per mile) for the month of March 1963, and shall continue to pay J. M. Vogt and/or his successor or successors at the rate of 7 cents per mile subsequent to March 1963 for all necessary mileage each day in traveling between home point and the assigned points of relief position No. 33.
3. Carrier shall reimburse Alois Lis in the amount of \$30.80 (440 miles at 7 cents per mile) for the month of March 1963 and shall continue to pay Alois Lis and/or his successor or successors at the rate of 7 cents per mile subsequent to March 1963 and all necessary mileage each day in traveling between home point and the assigned points contained in relief position No. 28.
4. In the event the rate of 7 cents per mile is changed by agreement, the new rate shall then apply to all Claimants named herein.

**EMPLOYEES' STATEMENT OF FACTS:** The Agreement between the parties, effective July 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant J. M. Vogt is assigned to relief position No. 33 with an assignment as follows:

Thursday —Fourth Operator, Stevens Point, Wisconsin  
Friday —Third Operator, Junction City, Wisconsin  
Saturday —Agent and operator, Spencer, Wisconsin  
Sunday —Operator, Marshfield, Wisconsin  
Monday —Rest Day

Because of inadequate passenger train schedules, the occupants of these relief assignments have for many years been authorized to utilize their personal automobiles for travel between stations in their assignments and have been allowed 7 cents per mile for such travel. Such allowance has always been computed on the basis of highway mileage between the successive stations in their relief assignment.

In the instance of Relief Assignment No. 28, the occupants of this position have been allowed 88 miles per week based on 44 miles travel from Owen to C. F. Yard, 32 miles from C. F. Yard to Thorp and 12 miles from Thorp to Owen each work week.

The occupants of Relief Assignment No. 33 have been allowed 94 miles per week based on 12 miles travel from Stevens Point to Junction City, 35 miles from Junction City to Spencer, 10 miles from Spencer to Marshfield and 37 miles from Marshfield to Stevens Point each work week.

Commencing with the month of February, 1963, claimants submitted automobile mileage expense accounts apparently based on daily round trip mileage between each station in their assignment and their "home station." Mr. Lis claimed round trip mileage from Owen for each day assigned to perform relief work at C. F. Yard or Thorp, and Mr. Vogt claimed round trip mileage from Stevens Point for each day assigned to perform relief work at Junction City, Spencer and Marshfield. In Mr. Lis's instance this amounted to 200 miles per week and in Mr. Vogt's, 192 miles per week.

These expense accounts were disallowed and revised accounts conforming to past practice and policy were submitted and honored.

Copies of schedule agreement between the parties to this dispute, effective July 1, 1956, and supplements thereto, are on file with the Board and are made a part of this record by reference. Nowhere in these agreements is there reference to or provision for designation or recognition of a "home station" or headquarters for regularly assigned relief employees whose assignments embrace more than one station.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Claimant J. M. Vogt is occupant of Relief Position No. 33 residing at Stephens Point, Wisconsin, a station on Carrier's line where he works the first and last days of his work week, between which he works a day each in Junction City, Spencer and Marshfield, Wisconsin. No transportation is furnished him, he receives no expense allowance and he reaches the three points via his automobile for which he is paid mileage at the agreed rate for one round trip per week from Stephens Point to Spencer, the farthest point within his assignment.

Claimant Alois Lis is occupant of Relief Position No. 28 residing at Owen, Wisconsin where he works the first two days of his week, then relieving two days at Chippewa Falls, Wisconsin Yard and one day at Thorp, Wisconsin. He similarly receives no transportation or expense allowance, furnishes his own car and is paid one round trip from home to the farthest point, Chippewa Falls Yard.

Employees contend that Claimants are entitled to mileage at the agreed rate to and from their home station on each day of travel since no transportation for necessary travel is provided and no expense allowance is paid for remaining away from home and that paying only one round trip per week to

the farthest point is a violation of the free transportation requirement of Rule 27 of the Agreement, to wit:

"Regular relief assignments will be concentrated as much as practicable, consistent with train service and to avoid unnecessary travel. Free transportation for necessary travel in providing relief will be made available to relief employees. Employees who perform relief service under this Rule 27 shall not be paid expense allowance or for deadheading. . . ."

Carrier responds that no home station has been designated for these positions. Therefore, there is no basis for such mileage computation. It is further urged that Carrier's method of payment has been unchanged for many years and that the fact that no previous claim has arisen constitutes binding acquiescence and that when Claimants bid into these positions they assumed all conditions of the position, presumably including such acquiescence.

Carrier urges that a recognition of the residence station of Claimants as home station would be invading the rights of the parties which can only be gained at the bargaining table, but such is not the case. Where no home station has been designated as here, Carrier could at any time make such designations without necessity of bargaining. In the opinion of the Board Carrier has effectively done so by the computation of mileage from the residence station of Claimants.

Claimants' home stations must be their residence stations unless otherwise designated by Carrier. Carrier cannot argue that they exist in a vacuum and thus avoid the Agreement simply because Carrier has not seen fit to exercise its right and has thus avoided its responsibility to formally designate a home station. (Award 10805).

To so argue would allow the Carrier on the one hand to contract for free transportation and on the other hand to withhold it. The fact that expense allowance is forbidden reinforces such interpretation.

As to acquiescence, Carrier has cited numerous awards dealing with grievances arising from alleged violations of various scope rules. Acquiescence and industry-wide practice have a particular relevance in scope rule matters, but in the one case cited dealing with compensation, Award 13864, this Board not only does not accept the finding as precedent but wholly rejects the opinion of that Board. When compensation in any form has been bargained for, the right to receive that compensation cannot be waived for an employee by his predecessor.

**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.