

368
Award No. 18324
Docket No. TE-18645

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk & Western Railroad Company, TC-5723, that:

CLAIM NO. 1

Carrier File: TC-SDY-(MISC)-69-2
Committee File: SCD-30

Carrier violated the PRR Agreement when it refused to compensate F. E. Ehrman for CT-477 Daily Time Reports for November 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19 and 20, 1968 these claims submitted for 1 hour and 30 minutes deadhead time at time and one-half rate.

CLAIM NO. 2

Carrier File: TC-SDY-(MISC)-69-5
Committee File: SCD-32

Carrier violated the PRR Agreement when it refused to compensate C. E. Flood for CT-477 Daily Time Reports for November 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 1968 these claims submitted for 1 hour and 20 minutes deadhead time at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based upon various provisions of the collective bargaining Agreement between the parties effective September 1, 1949 as amended and supplemented and more specifically upon provisions of the Memorandum Agreement dated March 21, 1966 and November 22, 1968. These two claims were handled separately on the property but due to their similarity are combined in one submission to this Board.

However, claims were then initiated on behalf of F. E. Ehrman and C. E. Flood as follows:

"Carrier violated the PRR Agreement when it refused to compensate F. E. Ehrman for CT-477 Daily Time Reports for Nov. 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19 and 20, 1968 these claims submitted for 1 hour and 30 minutes deadhead time at time and one-half rate.

F. E. Ehrman is a regularly assigned Block Operator on the Sandusky District and on the above dates held a regular position at Carrothers, Ohio. On November 22, 1968 an Implementing Agreement was signed by the Carrier and the TCEU relocating the Tower at Carrothers to Bellevue, Ohio. Until this Implementing Agreement was signed it is our position that F. E. Ehrman was covered under the PRR Agreement in which Rule 4-R-1 applied and reads as follows:

4-R-1(a) A regularly assigned employee who is required to work temporarily in a position other than his regular position shall be allowed any actual necessary expense incurred by reason of such temporary assignment.

F. E. Ehrman was required to travel from his home to Bellevue, Ohio on each of the above dates and he is entitled to deadhead time for each of the above claims."

"Carrier violated the PRR Agreement when it refused to compensate C. E. Flood for CT-477 Daily Time Reports for November 1, 2, 3, 6, 7, 8, 9, 10, 13, 14 and 15, 1968 these claims submitted for 1-hour and 20 minutes deadhead time at time and one-half rate.

C. E. Flood is regularly assigned Block Operator on the Sandusky District and on the above dates held regular position at Carrothers, Ohio. On November 22, 1968, an Implementing Agreement was signed by the Carrier and the TCEU, relocating the Tower at Carrothers to Bellevue, Ohio. Until this Implementing Agreement was signed it is our position that C. E. Flood was covered under the PRR Agreement in which Rule 4-R-1 applied and reads as follows:

4-R-1(a) A regularly assigned employee who is required to work temporarily in a position other than his regular position shall be allowed any actual necessary expenses incurred by reason of such temporary assignment.

C. E. Flood was required to travel from his home to Bellevue, Ohio on each of the above dates and he is entitled to deadhead time for each of the above claims."

The Carrier declined the claims.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are regularly assigned block operators whose positions were, prior to October 21, 1968, located at Carrothers, Ohio. On that date the office at Carrothers was closed and the positions of block operators and their incumbents were moved to Bellevue, Ohio, a distance of about twenty miles, with no change in assigned days, rates of pay, etc.

The parties negotiated an agreement relating to this change in work location, which was signed on November 22, 1968, and which provides certain benefits for the affected employees. This agreement provides a transportation allowance for such employees but does not provide payment for time consumed in traveling.

Claims were filed in behalf of the two claimants for payment for time consumed in traveling from their homes to the new work location on several days between the time the change in location became effective and execution of the above mentioned agreement.

The claims allege the payment was due under Regulation 4-R-1 on the theory that until the agreement became effective the claimants were constructively being required to work a position other than that to which they were regularly assigned.

Carrier resisted the claims, contending that the claimants were not diverted from their positions, but only the positions were moved; and that all matters related to the relocation were disposed of by the Agreement of November 22, 1968.

A careful review of the entire record convinces us that the Employes have not established a basis for their theory that the claimants were diverted, nor have they refuted the Carrier's defense that all pertinent matters were disposed of by the Implementing Agreement. And since it is well settled that a petitioner must establish by proper means all elements of its claim, we must deny the claims herein.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1970.

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