

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22103
Docket Number CL-21948

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8313, that:

Carrier violated the terms of the current working agreement, dated May 1, 1973, when it declined to pay Loss of Life Benefits to the personal representative of deceased employee George Wallace Yelverton, Jr., Extra Agent-Operator, Mobile District, who was involved in a fatal head-on-collision on June 21, 1975 while traveling (deadheading) by automobile from his headquarters point, Selma, Alabama, to his work point, Jackson, Alabama.

For this violation, the Carrier shall allow the personal representative of deceased employee George Wallace Yelverton, Jr. the Loss of Life Benefits provided in Rule L-3 of the current working agreement, namely \$100,000, less the \$10,000 paid under Group Policy Contract GA-23000 of the Travelers Insurance Company, net due under Rule L-3, \$90,000.

OPINION OF BOARD: This case presents a claim for Loss of Life Benefits to the personal representative of Mr. George Wallace Yelverton, Jr., alleging a violation of Rule L-3 of the controlling Agreement in Carrier's refusal to make such payment. Rule L-3 reads in pertinent part as follows:

"Where employees sustain personal injuries or death under the conditions set forth in paragraph (a) below, the carrier will provide and pay such employees, or their personal representative, the applicable amounts set forth in paragraph (b) below, subject to the provisions of other paragraphs in this rule.

(a) Covered Conditions:

This rule is intended to cover accidents involving employees covered by this agreement while such employees

"are riding in, boarding, or alighting from off-track vehicles authorized by the carrier and are

- (1) deadheading under orders or
- (2) being transported at carrier expense.

* * * *

(d) Exclusions:

Benefits provided under paragraph (b) shall not be payable for or under any of the following conditions:

- (1) Intentionally self-inflicted injuries, suicide or any attempt thereat, while sane or insane;
- (2) Declared or undeclared war or any act thereof;
- (3) Illness, disease, or any bacterial infection other than bacterial infection occurring in consequence of an accidental cut or wound;
- (4) Accident occurring while the employee driver is under the influence of alcohol or drugs, or if an employee passenger who is under the influence of alcohol or drugs in any way contributes to the cause of the accident;
- (5) While an employee is a driver or an occupant of any conveyance engaged in any race or speed test;
- (6) While an employee is commuting to and/or from his residence or place of business."

Mr. Yelverton (the "Employee") was hired by Carrier as an Agent-Operator trainee in November 1974 and ultimately gained seniority on the Mobile District Agent-Operator roster on May 19, 1975. The Employee resided in Selma, Alabama. During the week of June 2, 1975 he was assigned to work vacation relief on an Agent-Operator position in Jackson, Alabama for the period June 9 through June 21, 1975. Examination of his 1975 expense records for the week Monday, June 9, through Saturday, June 14, 1975 shows that the Employee claimed dead-head pay for the time traveling from Selma to Jackson on June 9 and from Jackson to Selma on June 14. Also, consistent with Rule H-2 of

the Agreement he claimed mileage for the round trip, plus subsistence allowance for the days and nights that week when he was assigned to Jackson. All of the evidence without doubt demonstrates that he was working a six-day assignment.

Mr. Yelverton returned to Jackson on Monday, June 16, 1975 for the second week of his assignment and worked through Friday, June 20, at which time he drove home to Selma and spent the night there. At approximately 5:50 a.m. on June 21, 1975 the Employee was driving from Selma to Jackson to report at 7:00 a.m. to his assignment. On the road near Gastonburg, Alabama another car approaching from the other direction crossed into his lane. In the head-on collision which ensued, both Mr. Yelverton and the other driver were killed.

Based on the foregoing facts there is no question that the "commuting" exception of Section d(6) applies to this claim even if arguendo it could be established that the Employee was traveling under "covered conditions." But at the time of his death Mr. Yelverton was commuting from his residence to his assigned place of business in order to complete his six-day assignment. He would not have been authorized to make that trip or deadhead under orders until the end of the workday on June 21, 1975. The language of the Rule is plain and it must be applied as written, notwithstanding the tragic and emotional circumstances which always surround its invocation. The plain language of the contract requires the denial of this claim.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.