

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23356
Docket Number CL-23356

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9000)

(1) The Missouri-Kansas-Texas Railroad Company violated the current Rules Agreement between the parties, including but not limited to Article V of Addendum No. 5, when it failed and refused to compensate Mrs. Pearl McCutcheon, mother of employe James E. McCutcheon, accidentally killed on May 8, 1978, in accordance with the terms thereof.

(2) The Missouri-Kansas-Texas Railroad Company shall now be required to compensate Mrs. Pearl McCutcheon the sum of \$90,000.00 plus interest at the rate of six percent (6%) compounded annually from sixty (60) days following the death of Mr. James E. McCutcheon, May 8, 1978.

OPINION OF BOARD: The claimant seeks a death benefit as the mother and beneficiary of a deceased employe who was accidentally killed when traveling in his personal automobile from his residence to his place of employment.

The Organization alleges that the employe meets the requirements of Addendum No. 5 of Article V which sets out the circumstances under which payments are made to employes, or on behalf of employes, injured under the circumstances outlined therein. More specifically, the Organization alleges that the employe was traveling on the instructions of, and at the expense of, the Carrier.

The Carrier, on the other hand, alleges that the employe was commuting from his home to his job on a Monday morning having returned from his employment to his home on his own initiative for the weekend.

The employe was headquartered in Muskogee, Oklahoma, which was also his residence. At the time of his death, he was filling a vacancy on Position No. 8366 which was located at Pryor, Oklahoma. He had received this assignment on April 5, 1978. He was paid the expenses of traveling to Pryor, Oklahoma for March 21, 1978, the date he received a previous assignment, immediately preceding this assignment, and had not been paid for any travel since then. He also claimed his room and board for the month of April. The death occurred on May 8, 1978 after he had returned to his home for the weekend on Friday, May 5, 1978.

Upon complete review of the record in this case, we can find no basis for the allegations of the Organization that the employe was traveling on the instructions of, or at the expense of, the Carrier.

The claimant obviously chose to return home for the weekend on his own volition and must be considered as commuting upon his return to his place of employment on the Monday morning of the fatal accident. Article V specifically excludes any compensation for injury which occurs while in a commuting status.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.

