Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30801
Docket No. CL-30470
95-3-92-3-323

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc. (former Seaboard
(Coastline Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10794) that:

(1) Carrier violated the Agreement when it denied Clerk R. T. Spivey travel pay and mileage allowance for service rendered during the month of November, 1990.

(2) Because of the above violation, Carrier shall now be required to compensate Clerk R. T. Spivey the amount of sixty-two dollars and forty cents ($62.40) for mileage claimed for the month of November, 1990."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts of this case are not in dispute. In November 1990, Claimant was regularly assigned to a relief position located in Baldwin, Florida. Earlier, Claimant had filed a written request for overtime work at the Carrier's Moncrief Yard in Jacksonville, Florida. During November 1990, Claimant was offered and accepted overtime work at Moncrief Yard on November 5, 13, 14, 16, 19 and 26, 1990. Subsequently, Claimant submitted an expense report claiming, among other things, $62.40 for automobile mileage

incurred during trips between Baldwin and Moncrief Yard.

By letter dated December 18, 1990, Carrier declined the portion of Claimant's expense report relating to automobile mileage between Baldwin and Moncrief Yard. On February 4, 1991, the Organization's District Chairman filed a claim objecting to the Carrier's refusal to reimburse the Claimant for his mileage expenses. Carrier denied the claim. The Organization appealed the claim, which was again denied by the Carrier. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization maintains that the resolution of this dispute is controlled by Rule 47 of the parties' Agreement which reads, in pertinent part as follows:

> "(a) Employees who are required in the course of their employment to be away from their headquarters point, as designated by the Carrier, including employees filling relief assignments or performing extra or temporary service, shall be compensated as follows:
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> * * *
>
> 3. An employee in such service shall be furnished with free transportation by the Carrier in traveling from his headquarters point to another point and return, or from one point to another. If such transportation is not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines, or the cost of other public transportation used in making the trip; or, if he has an automobile he is willing to use and the Carrier authorizes him to use said automobile, he will be paid an allowance at the established rate for each mile in travelling from his headquarters point to the work point, and return, or from one work point to another."

It contends that the Claimant satisfied all of the Rule's requirements for mileage reimbursement. The Organization claims that the Claimant, during the course of his employment, was required to be away from his headquarters point in Baldwin, Florida. It asserts that it is undisputed that the Claimant used his personal automobile to travel from his headquarters point to his work point at Moncrief Yard. Therefore, the Organization insists that pursuant to Rule 47, the Claimant is entitled to reimbursement for the miles he traveled between Baldwin and Moncrief.

The Organization maintains that Rule 47 applies to employees such as the Claimant, who voluntarily accept overtime at locations other than their headquarters point. It acknowledges that the Claimant was not required to work at Moncrief Yard. However, the Organization points out that the Agreement allows the Claimant to protect overtime at Moncrief Yard. Thus, it insists that when the Carrier used the Claimant at Moncrief Yard, the Carrier required the Claimant to be away from his headquarters point. Therefore, the Organization argues that the Claimant is entitled to the mileage reimbursement set forth in Rule 47.

In support of its position, the Organization cites a number of Public Law Board Awards in which it was found that an employee was "assigned" to perform certain duties, even though the employee had the option of declining the Carrier's assignment. Thus, it contends that the voluntary acceptance of an assignment satisfies those provisions of the Agreement which require that an employee be assigned to a position before being entitled to receive certain benefits. Therefore, the Organization argues that an employee such as the Claimant, who voluntarily accepts an overtime assignment, is entitled to receive the mileage reimbursement set forth in Rule 47.

Accordingly, and for the foregoing reasons, the Organization asks that its claim be sustained.

The Carrier, on the other hand, maintains that it has not violated the Agreement by refusing to grant the Claimant the requested mileage reimbursement. Like the Organization, the Carrier contends that the resolution of this dispute is controlled by Rule 47. However, it claims that since the Claimant was not required to be away from his headquarters point, the Claimant has not satisfied the requirements of Rule 47. Therefore, the Carrier argues that the Claimant is not entitled to the mileage reimbursement set forth in Rule 47.

The Carrier notes that by its own terms, Rule 47 applies to "[e]mployees who are required in the course of their employment to be away from their headquarters point...." It maintains that the Claimant made a written request to be considered for overtime work at the Moncrief Yard in Jacksonville, Florida. The Carrier maintains that when the opportunity to perform the requested overtime work was made available to the Claimant, he willingly chose to accept such work away from his headquarters point. Thus, it insists that the Claimant was not required by the Carrier to be away from his headquarters point. Therefore, the Carrier argues that the Claimant is not entitled to mileage reimbursement pursuant to the provisions of Rule 47.

The Carrier further maintains that the Organization failed to produce any pertinent probative evidence in support of this claim. It contends that the Organization simply made an unsubstantiated allegation. Thus, the Carrier argues that the Organization failed to satisfy its burden of proving those allegations necessary to justify its claim.

Accordingly, and for the foregoing reasons, the Carrier asks that the Organization's claim be denied in its entirety.

After careful review of the entire record, we are convinced that the Organization's claim must be denied. It is undisputed that the resolution of this dispute is controlled by Rule 47 of the parties' Agreement. That Rule, by its own terms, applies to "[e]mployees who are required in the course of their employment to be away from their headquarters point...." Here, however, the record evidence does not establish that the Claimant was required to be away from his headquarters point. To the contrary, the record evidence demonstrates that the Claimant voluntarily sought out and accepted work away from his headquarters point.

It is undisputed that the Claimant, who is regularly assigned to a position in Baldwin, Florida, filed a written request to be considered for overtime work at the Carrier's Moncrief Yard in Jacksonville, Florida. It also is undisputed that when the Claimant was offered at various times in November 1990, the overtime work at Moncrief Yard which he had previously requested, the Claimant had the option of declining to accept that overtime work. Thus, Claimant clearly was not required to be away from his headquarters point when he decided to accept the overtime work he was offered at the Moncrief Yard in November 1990. Since Claimant was not required to accept the overtime work at issue, we find that the Claimant has not satisfied the requirements of Rule 47. Therefore, we also find that the Claimant is not entitled to receive the mileage reimbursement set forth in Rule 47.

The Public Law Board Awards cited by the Organization do not dictate a contrary result. Those decisions concerned whether an employee was assigned to perform certain work. Here we are concerned with whether the Claimant was required to perform certain work away from his headquarters point. An employee who is assigned work by the Carrier and who has the option to accept or decline that assignment, has still been assigned the work by the Carrier. However, that same employee cannot be said to have been required to accept the Carrier's assignment, since he or she had the option to decline the assignment. Thus, we find that the Awards cited by the Organization are inapplicable to this dispute.

Accordingly, the Organization's claim is denied in its entirety.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.