Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32266
Docket No. CL-31910
97-3-94-3-281

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Illinois Central Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11046) that:

(1) Carrier violated the provisions of the existing Agreement when it failed to allow the occupant of the Relief Leverman Position, Clerk C. C. Tanis, mileage expense as required by Rule 27, beginning July 25, 1990.

(2) Carrier shall now be required to allow the occupant of the Relief Leverman Position, Clerk C. C. Tanis, mileage allowance for all mileage driven at the applicable rate of nineteen cents (.19) per mile."

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 were given due notice of hearing thereon.

As presented to the Board, this claim has two separate aspects, both concerned with application of the following portions of Rule 27, Travel Time and Expenses:

> "Employees who are required in the course of their employment to be away from their headquarters points as designated by the company, including employees filling relief assignments or performing extra or temporary service, shall be compensated as follows:
>
> (a) The company shall designate a headquarters point for each regular position and each regular assigned relief position. . . .
>
> (c) [For] an employee in such service . . . if he has an automobile which he is willing to use and the company authorizes him to use said automobile, he will be paid an allowance . . . for such miles in traveling from his headquarters point to the work point, or from one work point to another."

Under Bulletin No. 219, the Claimant was awarded the position of "Relief Leverman at Ash, Bridgeport, Corwith Towers, Chicago, Illinois, and the Homewood/Glenn offices."

The position required the Claimant to report to a different work point each day of his five-day week, and it was designated as a "permanent" position. The bulletin, however, did not specify a "headquarters point" as required by Rule 27(a).

The first aspect of the initial claim correctly contended that "this bulletin did not state a headquarters point as designated by Rule 27 paragraph (a)." Prior to the filing of the claim, the Local Chairman stated in the claim that he had brought this point to the Manager of Labor Relations' attention. According to the Local Chairman, the Manager responded that "the entire Chicago area was the headquarters point per attachment 2 Homes Zones." Further Carrier argument was that it was "obvious" from the assigned locations that all were in the "Chicago area."

The Organization's response, in its initial claim, was that the "Chicago area" cannot be designated as a headquarters point, and a more specific location is required. In its request for a remedy, the Organization selected one of the five points to which the Claimant was assigned and determined mileage allowance to the other four points.

Prior the Board's hearing of the matter, the Carrier wrote to the General Chairman in pertinent part as follows:

> "Based on the unique facts and circumstances involved in the case, the company will pay the claim. This payment is without prejudice to our position and should not be considered a precedent in any future claim."

In response, the General Chairman declined to accept this as a final resolution, stating that the purpose of taking the matter to the Third Division "was to provide an interpretation of our Rule 27 and to set a guideline for any future disputes."

The Board does not question the Organization's right to proceed with the matter, given the qualified reply of the Carrier. As to the initial claim of failure to state a headquarters point, the Board agrees, on the merits, that the Carrier was in violation of Rule 27(a). Whether this violation alone warrants a monetary remedy is moot, because the remedy requested in the claim has already been offered (and possibly already paid) by the Carrier.

This brings the Board to the second aspect: May the Carrier designate "the Chicago area" as a headquarters point? The Carrier contends that this has been its unchallenged practice for many years. Conversely, the Organization provides examples of bulletins issued previous to Bulletin No. 219 which clearly indicate a specific headquarters point within the Chicago area. (However, some of the Organization's examples do simply cite "Chicago" or "Chicago Terminal" as a location.)

The Carrier also refers to Attachment 2 of the Merger Agreement, which designates "any location in Chicago Terminal area" as a "home zone." The Organization challenges the application of this definition, used for displacement purposes, as being unrelated to its interpretation of Article 27(a).

The question of the "Chicago area" as an acceptable "headquarters point," however, is only a tangential aspect of this particular claim. Further, the Organization makes the assumption that a point it selected (Homewood) would have been the appropriate "headquarters point," although it is the Carrier's prerogative to select such a point. In effect, the Board is being asked to make a judgment in a situation where a headquarters point of "Chicago area" is designated in a bulletin. Because this is a hypothetical question, the Board declines to rule upon it. Such would be ripe for

resolution if and when this hypothetical situation becomes an actuality and is the subject of a claim.

In sum, the claim is sustained only as to a finding that the Carrier violated the Agreement by failure to meet the requirement of Rule 27(a). Assumably, the compensation sought in the claim has been granted; if not granted, the Award requires its payment. No further remedy is required.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 7th day of October 1997.