AWARD NO. 467
Case No. SG-41-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE)

BROTHERHOOD OF RAILWAY SIGNALMEN
and
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(WESTERN LINES)

QUESTION AT ISSUE

Case No. 1. "Was T. A. Fudge, Signal Maintainer adversely affected under Sections 6 and 8 of the Washington Job Protection Agreement (WJPA) when the Southern Pacific Transportation Company failed and/or declined to compensate him for use of his personal automobile for emergency calls on January 7, 8, 18, and 20, 1980, in the amount of $36.80?"

Case No. 2. "Was C. R. Moon, Signal Maintainer adversely affected under Sections 6 and 8 of the Washington Job Protection Agreement (WJPA) when the Southern Pacific Transportation Company failed and/or declined to compensate for the use of his personal automobile for emergency calls on May 21, 24, 25 and 27, 1980 and June 6, 8, 12 and 15, 1980, in the amount of $44.16?"

Case No. 3. "Was G. Y. Ochoa, Signal Maintainer adversely affected when the Southern Pacific Transportation Company failed and/or declined to compensate him for use of his personal automobile for emergency service on May 2, 3, 4, 7, 10, 11, 14, 17 and 18, 1980 in the amount of $103.50?"

OPINION OF BOARD

Claimants are former signal employees of Pacific Electric Railway Company ("Pacific Electric"). Pursuant to authority granted by the Interstate Commerce Commission, Pacific Electric was merged into the Carrier effective August 13, 1965. Beginning in 1965, the Carrier attempted to merge and consolidate the Organization's employees with the employees working on its Los Angeles Division represented by the Brotherhood of Maintenance of Way Employees ("BMWE"). No joint agreement could be reached

in the early years, although the Carrier entered into separate collective bargaining agreements with the Organization and the BMWE. The collective bargaining agreement between the Pacific Electric and the Organization provided:

> Rule 13(f). Calls: Hourly rated employes notified or called to perform service outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours and forty (40) minutes at the time and one-half time rate. All time held in excess of two (2) hours and forty (40) minutes will be considered and paid for as overtime hours, computed on the actual minute basis. The time of employes so notified prior to release from duty will begin at the time required to report and end when released. The time of employes so called after released from duty will begin at time called and end at the time they return to designated point at home station.
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> Employes off duty will respond promptly when called. They will provide the Signal Engineer with their home address.
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> Employes will be free to leave their homes after tour of duty and will not be required to hold themselves in readiness for calls.
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> Rule 55. Private Automobiles: When employes are instructed and are willing to use their private automobiles for company use they will be paid an allowance of 5 cents per mile for four cylinder cars and 7 cents per mile for cars with six or more cylinders.

While this agreement was in force between Pacific Electric and the Organization, both parties interpreted the agreement as entitling employees to payment of mileage expenses when traveling from home to their headquarters point in the event they were called for emergency work. In August 1978, a final agreement was reached consolidating the two labor organizations and an implementing agreement was adopted. Section 5 of the implementing agreement cancelled the collective bargaining agreement between Pacific Electric and the Organization except for certain provisions not relevant here. Among the benefits sought by the Organization in negotiating

the implementing agreement, but not included in the final agreement, were the following:

. .

a. Mileage when called for overtime work

. . .

and:

> (a) When called outside regular working hours, employes will be allowed automobile mileage at the highest rate applicable to any employe of the Southern Pacific Transportation Company, from the employe's residence to the headquarters point and return to the residence.

Claimants were called outside of their regularly assigned working hours on various dates in January, May and June 1980 to perform emergency work. Each Claimant presented a personal expense account in which he claimed automobile mileage for the use of his personal vehicle in transporting him from his home to his headquarters point. The claims were based on alleged violations of Rules 6 (a) and 8 of the Washington Job Protection Agreement and Rule 76 of the Carrier Collective Bargaining Agreement, which provide as follows:

> Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which

he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

Section 8. An employee affected by a particular coordination shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Rule 76. Private automobiles. When employes are requested and are willing to use private automobiles for Company use, an allowance shall be made at the established automobile mileage allowance paid by the Company to its employes.

The parties agreed to have the Board consider this case on its merits despite some question as to whether or not the claims were procedurally barred. In light of that stipulation, the Board's decision specifically does not reach issues related to the timeliness of the claims.

The Organization contends that the consolidation between Pacific Electric and the Carrier is a "coordination" under the Washington Job Protection Agreement. It maintains that the discontinuance of the mileage payment in the words of the Washington Job Protection Agreement, "places Claimants in a worse position with respect to compensation and rules governing working conditions" and "deprives them of benefits attaching to [their] previous employment" in violation of Rules 6 (a) and 8 of that Agreement as well as Rule 76 of the Collective Bargaining Agreement. The Organization asserts that a "tacit understanding" existed under Rule 55 of the agreement with Pacific Electric that an employee who answered an

emergency call would be paid a mileage allowance for using his personal automobile to travel from his home to his headquarters point. The Organization maintains that since the language of Rule 55 is similar to the language of Rule 76, the same "tacit understanding" should be in effect under the collective bargaining agreement between the Carrier and the Organization. Finally, the Organization argues that because an employee is considered on duty from the moment he receives an emergency call, Claimants are, therefore, entitled to the payment for automobile mileage.

The Carrier maintains that no violation has been committed and contends that no provision of the collective bargaining agreement or the implementing agreement and no past practice requires the payment of automobile mileage for employees between their home and headquarters point.

The Carrier points out that the provision that would have entitled employees who are called for emergency work to the payment of automobile mileage was specifically rejected in the negotiation of the present collective bargaining agreement. The Carrier argues that the Organization should not be allowed to obtain through arbitration what it could not obtain in negotiation.

In addition, the Carrier maintains that whatever practices regarding automobile mileage that may have existed between the Organization and Pacific Electric were cancelled by Section 5 of the implementing agreement. The Carrier further maintains that Claimants have not suffered a loss of earnings related to the implementing agreement.

Finally, Carrier asserts that this entire question regarding the payment of automobile mileage was resolved by Award No. 1 of Public Law Board No. 2925 which involved the same issues, the same parties and Claimant Fudge as representative for various former employes of Pacific Electric who had entered Carrier's service. In that decision, the Board chaired by Neutral Kasher held that the Organization's Washington Job Protection Agreement claims should be heard by a Section 13 Committee. That Board further denied Claimant Fudge's claim for payment of mileage on the grounds that Section 5 cancelled Rule 55 and that no past practice had been established or proven which entitled Fudge to payment in the absence of a requirement to that effect in the collective bargaining agreement.

After considering the entire record, the Board finds that the instant claims must be denied.

The decision rendered by Public Law Board No. 2925 controls the situation before this Board and that decision is sound. Rule 55 of the former agreement between the Organization and Pacific Electric was interpreted by both parties to entitle signal maintainers to receive payment for their automobile mileage. This provision was cancelled by Section 5 of the implementing agreement. Rule 76 of the collective bargaining agreement does not entitle employees who work emergency calls to payment for their mileage. It was never interpreted that way. The fact that the Organization sought unsuccessfully to have a provision added to the agreement that would grant that entitlement to employees under the agreement is evidence that Rule 76

was not interpreted to mean that, and that no past practice had evolved creating that entitlement.

With this foundation, the Board then finds that Claimants cannot be found to be in a worse position because of the consolidation and that they were not deprived of benefits attaching to their previous employment because the right under which they claim did not and does not exist under the collective bargaining agreement between the Organization and the Carrier.

AWARD

The answer to each of the questions posed is "no."

Nicholas H. Zumas, Neutral Member

Date: 1-4-89