

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 17
CASE NO. 23

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT
OF CLAIM:

1. That the Carrier violated the Parties' Agreement when paychecks of the employees listed below were missent to locations other than where the employees were assigned and/or their respective homes.
2. That the Carrier shall compensate Claimants at their respective straight time rates, computed on the basis of two (2) minutes per mile as provided in Rule 23 of the Parties' Agreement bearing an effective date of August 1, 1971:

		<u>Paycheck</u>
(a)	<u>Trackman Johnny Lee</u>	<u>Work Assignment: Sent to:</u>
	Pay Dates: 12/29/81	Quanah, Texas
	1/14/82	Stamford
	1/29/82	Texas
	2/11/82	
	2/26/82	
	3/12/82	
	3/30/82	
	4/15/82	

Distance travelled between Quanah and Stamford, Texas - 220 miles round trip, total miles travelled - 1760 divided by 2 minutes per mile equals 88 hours.

(b) Machine Operators: Work Assignment Paychecks sent to:

- | | | |
|------------------------|---------------|----------------|
| 1. David Gutierrez | Vernon, Texas | Memphis, Texas |
| 2. R. A. Ponce De Leon | | |

Pay Date: 1/29/82

Distance traveled 300 miles round trip by each Claimant between Vernon and Memphis, Texas. 300 miles divided by 2 minutes per mile equals 15 hours, each employee.

(c) Machine Operator E. R. Roach

Pay Dates:	Work Assignment:	Paychecks sent to:
1/29/82	Vernon, Texas	Memphis, Texas
2/12/82		
2/26/82		

Distance travelled between Vernon and Memphis, Texas - 90 miles round trip, a total of 270 miles divided by 2 minutes per mile equals 13½ hours.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

The Employees Statement of Facts is as follows:

"During late 1981 the Carrier transferred its data processing which included the processing and distribution of paychecks for Maintenance of Way employees from Fort Worth, Texas to St. Paul, Minnesota.

From the outset of this change, the system was horribly fouled-up and resulted in many of the employees' paychecks in the Maintenance of Way Department being sent to locations other than where they were working and/or their homes.

During this period, many of the misplaced checks were sent to near-by locations and, in these instances, checks were picked up and transferred by Carrier Officials traveling from one point to another or the employees accepted this as a temporary inconvenience and picked up checks on their own time. During this period

Brotherhood Representatives were innundated with complaints and this problem was discussed on numerous occasions with the different offices and Carrier Officials involved. In other instances, including those enumerated above, the employees were not so fortunate and their paychecks were transferred to locations varying from 45 to 150 miles from their work locations and, in two instances cited, these oversights covered several pay periods.

Rule 43 of the Parties' Agreement provides:

'PAYING OFF

'Rule 43. When consistent, employees will be paid off during their regular working hours semi-monthly, except where existing State Laws provide a more desirable condition. When there is a shortage equal to one day's pay or more not due to neglect or omission of employee, same shall be paid promptly. Employees will be promptly notified when claim for time or other allowances is not allowed.'

Pursuant to the provisions of the above quoted Rule, claims were filed with Carrier Officials as follows:

(a) Johnny Lee	4/26/82
(b) David Gutierrez	3/23/82
R. A. Ponce DeLeon	3/15/82
(c) E. R. Roach	3/11/82

Each of the claims were progressed through the prescribed channels, including discussion in conference and remain unsettled.

In each of the claims, Carrier's attention has been directed to the provisions of Rule 43, above quoted, and straight time compensation was requested for the time consumed by each employee traveling to and from the location of his paycheck.

Inasmuch as all of the traveling was done by each of the Claimants in his automobile, it was requested that the time consumed in travel be computed by using the two (2) minutes per mile factor as outlined in Rule 23(b) of the Parties' Agreement, which reads:

'Rule 23 (b)

'Traveling - Performing Relief or Temporary Work (b) : Employees filling relief assignments or performing extra or temporary

service, including those normally assigned to road work in accordance with paragraph (c) of this rule, shall be compensated for travel and waiting time as follows:

'If the time consumed in actual travel, including waiting time enroute from the designated headquarters to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one (1) hour, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time enroute necessary to return to his designated headquarters point, or the next location exceeds one (1) hour, then the excess over one (1) hour in each case shall be paid for as working time at the straight time rate of the job to which traveled. When employees are traveling by private automobile, time shall be computed at the rate of two (2) minutes per miled traveled.'"

The Carrier's Statement of Facts is as follows:

"Four separate claims were appealed and handled accordingly at varying times, for various amounts of travel time payments (and in two cases, includes per diem payments for Messrs. Ponce DeLeon and David Gutierrez), all based on the same nature of dispute alleging that claimants' semi-monthly paychecks were sent to locations other than their 'gang or home location', thereby 'forcing' claimants to travel to pick up their missent paychecks.

There is no dispute as to paychecks of employees being sent to other than their normal pick up points. The problem at the time was system-wide and affected all classes of employees, including management personnel.

Claimants here involved opted to travel to distant points, using their own vehicles without instructions from Carrier, to pick up their paychecks, in most cases to former duty or home locations.

As a result of using their private vehicles to obtain their paychecks, claims were submitted for travel time consumed to retrieve them. Claims as here presented were progressed and handled without settlement."

The Board finds from the evidence of record that Claimants' paychecks were misrouted as a consequence of a transfer of the payroll handling from Denver, Colorado to St. Paul, Minnesota, effective first of January, 1982. Apparently, there was much confusion and disruption in switching payroll procedures, causing but not limited to misrouting, misprinting, delays in mailing checks and backlogs mounting daily, making corrective measures painfully slow. The problem involved all categories of employees, including managerial. Claimants were not singled out for misrouting of paychecks and they were not discriminated against or inconvenienced "on purpose". Certainly, there was no arbitrariness or bad-faith exercised against them.

The Board further finds that Claimants were not instructed or authorized to retrieve their paychecks or use their vehicles to transport them. Claimants were not filling relief assignments, performing extra or temporary work, or engaging in any type of service, obligation or orders on behalf of Carrier. Under the specific facts in this case, Rule 23(b) is not applicable.

The Board finds from the evidence of record that Claimants were actually paid on a semi-monthly basis. In view of the specific facts and circumstances in this particular case, there was no violation of Rule 43. There is no doubt that the misrouting of paychecks caused inconvenience to Claimants. In the circumstances of this case, however, this Board does not have authority to compensate for the inconvenience involved. See, in this connection, National Railroad Adjustment Board Awards, Third Division, 18801 (Ritter), 18486 (Rosenbloom), 12250 (Seff), and 13935 (Dorsey).

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The Claim is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: April 5, 1983