

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 523

PARTIES
TO

UNITED TRANSPORTATION UNION (E)

vs.

DISPUTE:

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT
OF CLAIM:

Claim of deceased Fireman A. M. Easton under Article IX of Mediation Agreement (Case No. 8303) with the former B. L. F. & E. (now United Transportation Union (E)) dated September 14, 1968.

FINDINGS:

This dispute was referred to Public Law Board No. 523 (merits) for determination on the merits after hearing before Procedural Referee Morris Handsaker, neutral member and Chairman of Public Law Board No. 523 (procedural), and an award by that neutral finding that the dispute is referable to this Public Law Board for determination on the merits.

The Board upon the whole record and all the evidence finds that:

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act as amended;

The Board has jurisdiction over the dispute involved herein.

This claim arose when the representative of Fireman A. M. Easton, deceased, demanded payment in the sum of \$100,000 to the Estate of the deceased, under the provisions of Article IX of Mediation Agreement (Case No. 8303) dated September 14, 1968. Those portions of the said Article IX pertinent to this dispute are as follows:

ARTICLE IX - PAYMENTS TO EMPLOYEES INJURED UNDER CERTAIN
CIRCUMSTANCES

Where employees sustain personal injuries or death under the conditions set forth in paragraph (a) below, the Carrier will provide and pay such employees, or their personal representative, the applicable amounts set forth in paragraph (b) below, subject to the provisions of other paragraphs in this Article.

(a) Covered Conditions

This Article is intended to cover accidents involving employees covered by this agreement while such employees are riding in, boarding, or alighting from off-track vehicles authorized by the Carrier and are-

- (1) deadheading under orders or
- (2) being transported at carrier expense.

(b) Payments to be Made:

In the event that any one of the losses enumerated in subparagraphs (1), (2), and (3), below results from an injury sustained directly from an accident covered in paragraph (a) and independently of all other causes and such loss occurs or commences within the time limits set forth in subparagraphs (1), (2), and (3) below, the carrier will provide, subject to the terms and conditions herein contained, and less any amounts payable under Group Policy Contract GA-23000 of The Travelers Insurance Company or any other medical or insurance policy or plan paid for in its entirety by the carrier, the following benefits:

(1) Accidental Death or Dismemberment

The Carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	\$100,000
Loss of Both Hands	100,000
Loss of Both Feet	100,000
Loss of Sight of Both Eyes	100,000
Loss of One Hand and One Foot	100,000
Loss of One Hand and Sight of One Eye	100,000
Loss of One Foot and Sight of One Eye	100,000
Loss of One Hand or One Foot or Sight of One Eye	50,000

(Loss shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrevocable loss of sight.)

Not more than \$100,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident.

The Decedent was employed as a Fireman on a work train to perform track maintenance work between Mattoon, Illinois, and East St. Louis, Illinois. The assignment stipulated that the train and engine crew would tie up at various locations as the work progressed and upon reaching the tie up point on a particular day, the crew was provided with lodging accommodations paid for by the Carrier in accordance with the provisions of Article II of the June 25, 1964 National Agreement, the pertinent parts of which are shown below:

ARTICLE II - EXPENSES AWAY FROM HOME

(1) When the Carrier ties up a road service crew (except short turnaround passenger crews), or individual members thereof, at a terminal (including tie up points named by assignment bulletins, or places listed in Schedule Agreements, or observed by practice, as regular points for tying up crews) other than the designated home terminal of the crew's assignment four (4) hours or more, each member of the crew so tied up shall be provided suitable lodging at the Carrier's expense or an equitable allowance in lieu thereof. Suitable lodging or an equitable allowance in lieu thereof shall be worked out on a local basis. The equitable allowance shall be provided only if it is not reasonably possible to procure lodging.

If an allowance is being made in lieu of lodging as well as other considerations under provisions of existing agreements the amount attributed only to lodging shall be removed if suitable lodging is supplied, or offset against an equitable allowance. This shall be worked out on a local basis.

The provisions of this agreement shall be made effective at a date no later than 30 days following the effective date of this agreement.

The record and evidence shows that effective April 23, 1968, the Carrier established a work train, performing track maintenance on its St. Louis Line, St. Louis Division, which Division extends in a westerly direction from Indianapolis, Indiana to East St. Louis, Illinois, a distance of approximately 249 miles. Work began immediately outside switching limits, Big Four Yard (Indianapolis) and proceeded westerly. As the work progressed the crew in service on the work train completed service, on a daily basis, at various locations, and on October 17, 1968 first came within the jurisdiction of Track Supervisor N. B. Sellars, whose territory extended from Pana, Illinois (Mile Post 167) to East St. Louis, Illinois (Mile Post 249).

At many locations at which the crew on the work train completed their tour of duty each day there were no facilities for "suitable lodging", as used in the June 25, 1964 National Agreement, immediately adjacent to the tie-up point so that it was necessary for the crew to be transported between the tie-up point and the designated facility at the completion of a tour of duty; from the lodging facility to the work point at the beginning of the next succeeding tour of duty.

The record and evidence further shows that there is an inadequacy of public transportation in the area within Track Supervisor Sellars' jurisdiction known as Maintenance of Way Subdivision No. 14 and the record further shows that the members of the train and engine crew in service on the work train were initially transported between the lodging facility and the work site by Maintenance of Way Department vehicles.

The record and evidence further shows that on October 22, 1968 Track Supervisor Sellars was approached by the Conductor in service on the work train at that time, E. L. Bolles, at which time Mr. Sellars authorized a member of the work train crew to be selected by that crew and to be reimbursed on a mileage basis to furnish his privately owned automobile to provide the necessary transportation. It was proposed at that time that the utilization of privately owned automobiles for the purpose of transporting the members of the crew between the lodging facility and the work site was to be on an alternating basis among the members of the crew, one member to provide transportation for the entire crew.

It is the contention of the Carrier that the use of the privately owned automobiles for the purpose above outlined was to be confined to the transportation of the crew from the lodging facility to the work site in the morning; from the work site to a suitable restaurant for lunch, if necessary; and from the work site to the lodging facility upon the completion of the day's tour of duty.

The record and evidence further shows that the crew in service on the work train at the time that the authorization to use private automobiles was requested and granted by Track Supervisor Sellars consisted of Locomotive Engineer J. S. Hutchins, Locomotive Fireman A. D. Hughes, Conductor E. L. Bolles, Brakemen G. L. Hutton and C. H. Walker.

The record and evidence further shows that Engineer Hutchins utilized his automobile during the first period immediately following the authorization granted by Track Supervisor Sellars and that during that period he billed the Carrier for 400 miles, and there is no showing that this mileage exceeded that contemplated by the authorization, that is, the transporting of the crew between the work site and the lodging site and to and from lunch, which was obtained at the lodging site.

The record further shows that during the work week beginning Monday, November 25, 1968, the work train crew was lodged in the Hi-Cafe Motel on Route 66, approximately three miles East of Livingston, Illinois, and that the said Motel was approximately five miles from the work site at that particular time.

The record further shows that adequate dining facilities were maintained immediately adjacent to the lodging facilities.

The record further shows that on Wednesday, November 27, 1968 (the date on which the traffic accident occurred in which the decedent Fireman Easton was killed) the work train crew consisted of Engineer C. H. Moulton, Jr., Fireman A. M. Easton, Conductor E. L. Bolles, and Brakemen G. L. Hutton and H. W. Henderson.

The record shows that the crew performed service from 5:30 a.m. until 3:15 p.m.; that they were engaged in unloading main track cross ties between Mile Post 217.4 and Mile Post 219, and that they began and completed their tour of duty at Livingston, Illinois.

The record further shows that Fireman A. M. Easton, the decedent herein, was the member of the work train crew utilizing his privately owned vehicle to transport the entire work train crew, pursuant to the authorization given by Track Supervisor Sellars, October 22, 1968.

The record further shows that upon completion of the tour of duty on November 27, 1968, the entire crew above named, transported by Fireman Easton, went directly to the Hi-Cafe Motel.

The record further shows that the said crew arrived at the Hi-Cafe Motel not later than 4:00 p.m.

The record further shows that at 7:50 p.m. on November 27, 1968, Fireman Easton and Engineer Moulton were involved in a traffic accident at the intersection of Livingston Road and Route 66, a point 3.08 miles south of the Hi-Cafe Motel, and that both Fireman Easton and Engineer Moulton sustained fatal injuries in the said accident.

The Organization contends that subparagraph (a) (2) Covered Conditions of Article IX above referred to which reads, "being transported at Carrier expense" governs this case. The Organization shows that Fireman Easton was, in fact, paid daily mileage allowances several miles in excess of the mileage necessary to transport the work train crew between the on and off duty points and the suitable lodging location. However, this contention in itself is not persuasive for the reason that failure of the Carrier's employees to check the claims for mileage made by the owners of privately owned automobiles to determine the purposes

for which the mileage was made and paid for cannot substantiate in itself, the claim. Indeed, there is evidence to show that the only authorization that the drivers and owners of private cars had was to transport the crew only between the points above referred to, and that the authorization did not contemplate utilizing the privately owned automobiles to transport the crew, or any part of it, to restaurants other than those found at the lodging site or adjacent thereto.

The facts as revealed in the record and in the evidence show that the decedent had returned to the lodging site on Wednesday, November 27, 1968, upon the completion of the tour of duty of the entire crew, at a time not later than 4:00 p.m.

The evidence further shows that the decedent in company with Engineer Moulton, left the lodging site sometime after the crew went off duty, and that they were involved in a traffic accident at the intersection of Livingston Road and Route 66, some 3.08 miles south of the lodging site, and some four hours and twenty-five minutes after they went off duty, and approximately three hours and fifty minutes after the crew reached the designated lodging and dining site.

The evidence and the record clearly show that the authorization to use private automobiles was granted by Track Supervisor Sellars on or about October 22, 1968, more than one month prior to the accident referred to. We find from the record and the evidence that the purpose of this authorization was to furnish transportation between the work site and the lodging site. We further find that the restaurant at Livingston, Illinois, was at the same location as the lodging site, and we further find that the claimant had no authority to use his automobile to a point removed from that lodging site, when adequate restaurant facilities existed at the said lodging site. We further find that the contention that the claimant was paid for traveling from the lodging and meal site at Livingston, Illinois to a restaurant of his own choice some distance removed therefrom, is not well founded in fact or in law. We further find from the evidence that he was not "being transported at carrier expense" at the time of the accident in which he met his death, within the meaning of the term as found in subparagraph (a) (2) of Article IX. We further find that it was not necessary for Mr. Sellars, who granted the authorization on October 22, 1968, to impose any restrictions on the use of private cars for the reason that those restrictions were inherent in the authorization which was granted for the purpose of transporting the crew to and from the job site to the lodging site, and to and from the job site to the restaurant adjacent to the lodging site for the noon meals. We further find that the meals were available at the lodging site and for the reasons shown in the findings, we must deny the claim.

AWARD: Claim denied in accordance with the Findings.

Kenneth P. Gilliphr
Referee

W. R. D. Brown
Carrier Member

J. W. Jennings
U.I.U. Member
Resenting