

DISSENT TO AWARD NO. 15
SPECIAL BOARD OF ADJUSTMENT NO. 353

The Opinion of the majority in this case states:

"The rule is clear and unambiguous and it is not necessary to rely on past practice to interpret it. Repeated violation of a rule, even if acquiesced to by parties, cannot modify an agreement."

The provisions in dispute were portion of National agreement reading:

"Free transportation for necessary travel in providing relief will be made available to relief employees." (Emphasis supplied)

(Agreement of July 13, 1945, retained under Section 3(g) of Agreement March 19, 1949)

which left to the parties on the individual carriers the determination as to what constituted "necessary travel". On this property relief work had been performed by extra telegrapher who did not receive expenses while away from home nor receive pay for deadheading, and who did not receive allowance for transportation except when train service not available on the initial trip to a job and the final trip after being relieved from the job. It was understood for employes occupying regular rest day relief assignments requiring work at different stations the "necessary travel" would be that required to move from one station to another as required by the assignment, and that free transportation would be provided for such travel. It was agreed that when the use of train service would result in a long layover waiting to begin work after arrival at a station or waiting for train in moving to a different location in the assignment and such long layover could be avoided by use of bus or privately owned automobile, the Carrier would reimburse the regular relief employe for bus transportation or pay automobile mileage. The agreement provided this automobile allowance was to be made under such circumstances

"* * in moving from one station to another, within the assignment* *."

Nothing in the National agreement nor the implementing agreement provided that the employe was entitled to return to headquarters each night. The general chairman agreed the employe

did not have that right, as evidenced by letters presented to the Board. While the general chairman changed his position some three years later and handled claims, he did not progress claims after they were denied, thus recognizing that the agreement reached was binding.

Now, more than 20 years after the agreement as to transportation was reached on the property, it is held that the general chairman misinterpreted the National rule, said to be "clear and unambiguous."

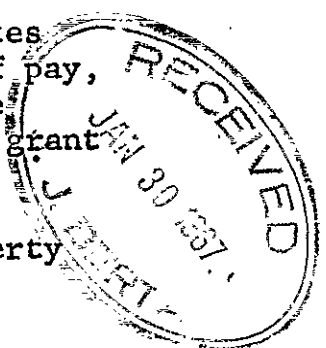
The words "necessary travel" manifestly are not clear and unambiguous. It would have been easy to state that a "home station" would be designated and an employe would be entitled to return to his home station each day and to receive free transportation for such travel, if such had been the intent. But the rule left to the parties on individual roads the matter of what would constitute "necessary travel" under rules and conditions in effect on each road. The agreements reached on the individual roads thus were implementing agreements and not "interpretations" of the National agreement.

The Opinion cites with approval a decision by another referee in Third Division Award 4305. There the parties added a paragraph to the National rule. The referee gave weight to this paragraph but held that it was not inconsistent with the claim filed. In the present case it is quite clear from the general chairman's own words and actions that the agreement reached on this property regarding necessary travel is inconsistent with the present claim. Presumably if the referee in Award 4305 had been passing on similar evidence he would have found such agreement binding and denied the claim. His opinion does not indicate any thought that the general chairman was without authority to reach an agreement on "necessary travel", which, in effect is the decision here.

Section 7 of the agreement establishing the present Board provides:

"The Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules and working conditions and shall not have authority to change existing agreements nor to grant new rules."

In my opinion the agreement reached on the property governed, and that the award is erroneous.


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