Award No. 20
Case No. 13

SPECIAL BOARD OF ADJUSTMENT NO. 421

THE ORDER OF RAILROAD TELEGRAPHERS )
)
vs. )
)
NEW YORK CENTRAIL RAILROAD, EASTERN )
DISTRICT (except Boston and Albany )
Division) and NEW YORK DISTRICT )

STATEMENT OF CLAIM:

1. Carrier violated the terms of the agreement between the parties when it failed and refused to reimburse R. S. Beaty for necessary mileage accrued while covering extra assignments during the month of January 1961.

2. Carrier shall be required to reimburse Mr. R. S. Beaty in the amount of $36.48 plus interest at the rate of 6%.

FINDINGS:

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

The Carrier and the Employee and Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934, and as since amended.

The Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

OPINION OF BOARD:

At the time involved in this claim R. S. Beaty was an extra telegrapher on the Fall Brook District of Carrier's Syracuse Division, his headquarters station being Signal Station YD at Corning, New York. On January 3, 1961 claimant was called to cover a temporary vacancy on a regular assignment at Beaver Dam, New York. He covered this assignment for the duration of the vacancy, namely January 3 to 21 inclusive. Beaty covered other assignments later in the same month but reference to this January 3-21 assignment is sufficient to indicate the circumstances creating the dispute between the parties.

No regular passenger train services have been operated on the Fall Brook District since 1935. As a result, extra telegraph service employes on this District are authorized to use their private automobiles to protect positions for which called. Claimant Beaty was reimbursed for automobile mileage from Corning to Beaver Dam on January 3, which was the beginning of the above-described assignment. He was also reimbursed for mileage for his return from Beaver Dam to Corning at the end of the assignment on January 21. The Organization contends, however, that claimant was entitled to reimbursement for round trip mileage between Corning and Beaver Dam for each day the position was protected. The Organization states without refutation by the Carrier that claimant actually traveled between these two points each day of the assignment.

The governing agreement provision is Article 3(d), which states in pertinent part:

> "Extra employes shall be furnished free rail transportation over rail lines of this property necessary to protect positions for which called, or if such transportation is not available and extra employes are authorized to use other than rail transportation to protect positions for which called the company will reimburse such extra employes for fares paid or for use of private automobile in conformity with allowances provided for in Section (f) below."

Carrier contends claimant was entitled to mileage reimbursement only for a single round trip because he was given only one call. Management asserts it does not matter whether an extra man is called for a one day vacancy or for a vacancy of several days.

In support of its interpretation of Article 3 (d) the Organization notes that Article 14, which deals with travel time (deadheading) pay for extra employes, expressly restricts such pay to the initial and final deadheads when the extra employe covers the position to which deadheaded for more than one day. The Organization urges that the absence of express language setting forth an equivalent restriction in Article 3 (d) must mean that no such restriction was mutually intended there.

The Carrier points to the established fact that from the incorporation of Article 3(d) in the contract in 1948 until the latter part of 1960, no contention was made that daily round trip mileage was due extra employes under the subject circumstances, and that Article 3(d) was consistently administered in the manner in which it was applied to Claimant Beaty in the subject instance.

We conclude that the language of Article 3(d) is ambiguous on the point at issue. It does not specifically state that daily round trip travel (mileage) allowances will be granted for a single assignment (call) involving protection of a position for more than one day. On the other hand, the language does not expressly restrict such allowances to a single round trip for a multi-day assignment. Nevertheless there is a consistent past practice, developed over a period of years, which supports the Carrier's position on the application of Article 3(d). The Union has had reason to be aware of this practice. We think this practice reflects the mutual interpretation given by the parties to the language of Article 3(d). We do not think the inference which the Union draws from the existence of a specific restriction in Article 14 outweighs the effect of the consistent past practice in the application of Article 3(d).

AWARD:

Claim denied.

/s/Lloyd H. Bailer
Lloyd H. Bailer, Chairman

/s/L. Faulds
L. Faulds, Carrier Member

/s/R. J. Woodman
R. J. Woodman, Employe Member

March 13, 1963.