REVIEW COMMITTEE DECISION

Review Committee File Nos. 1375-75-4, 1378-75-7,
1379-75-8 and 1380-75-9
East Bay Division Grievance No. D.Gr/C 1-75-1
North Bay Division Grievance No. D.Gr/C 4-75-2
San Joaquin Division Grievance No. D.Gr/C 25-75-3
San Francisco Division Grievance Nos. D.Gr/C 2-75-1/2/3/5

Subject of the Grievances

The grievances arose from similar facts; effective January 1, 1975, Company revised the August 1, 1974 Standard Practice 724.5-1, Use of Employee-Owned Cars on Company Business, which resulted in the grievants receiving 11¢ per mile while using their cars on Company business as opposed to the 17¢ per mile for the first 250 miles in any month, plus reduced mileage rates beyond the first 250 per month that was provided for in the Standard Practice prior to its revision. The grievants were either attending Company training classes or were performing work away from their regular headquarters, which caused them to provide their own transportation for either one instance or on an occasional basis. The Union alleges that the decrease in the mileage rates is in violation of both the Physical and Clerical Labor Agreements, specifically, Title 107 of the Physical Labor Agreement and Title 24 of the Clerical Labor Agreement, arguing that Company reduced the conditions of employment of the grievants by decreasing the mileage rates to their disadvantage.

Discussion

These cases, and others more recently filed in the Divisions, pose an interesting, but complex, problem in that they deal with a long standing unilateral practice of which Union was knowledgeable but had never protested. The problem is further complicated, in the first place, as the Labor Agreements specifically grant the Company authority to establish and revise mileage allowance rates (Section 201.6-Physical Agreement; Section 15.2-Clerical Agreement), which it has regularly done in the past without challenge by the Union. The past Union acquiescence can, however, be attributed to the further fact that mileage allowance provisions established by Company's Standard Practices before January 1, 1975 have been (1) applied equally to all bargaining unit employees, i.e., the same cents per mile for a given mileage, and (2) until now, always revised upward for everyone. That neither is the case following the 1975 revision of Standard Practice 724.5-1 underlies the present grievances. As last revised, some bargaining unit employees receive a flat 11¢ a mile allowance - a cut of 6¢ a mile for the first 250 miles a month and 1¢ for the next 750 miles. Others, following the latest revision, receive substantially greater reimbursement for use of their cars on Company business.

The threshold question then, in this unique situation, is whether such a complete change from the previously established policy of treating all alike is inequitable and, more importantly, in the absence of first obtaining Union's concurrence, a violation of the provisions of the Physical and Clerical Labor Agreements.

In the Review Committee's analysis of the Labor Agreements, the un-negotiated 1975 revisions offend the established mileage allowance provisions of both Labor Agreements. A literal reading of Sections 201.6 and 15.2 and the established past practice for others who, though not falling within either provision, are paid a mileage allowance, permit a unilateral change when the rate is adjusted upward for all. This is not the situation here and as both of the Labor Agreements further require that a "change of condition of employment to the employee's disadvantage" must be first negotiated and agreed to by Company and Union (Physical Agreement, Section 107.1; Clerical Agreement, Section 24.7), Sections 107.1/201.6 and 24.7/15.2 must be construed jointly in arriving at a resolution to the grievances. Simply stated, where, as here, the 1975 mileage allowance, in part, established a condition of employment to the disadvantage of some bargaining unit employees and has not been agreed to by Union, the revised mileage allowance provisions is invalid insofar as employees represented by Local 1245, IBEW are concerned, the rate applicable to them being those established by the August 1, 1974 Standard Practice.

There remains then the difficult question of an appropriate remedy. Generally, the remedy in a case of this nature calls for an adjustment based on the mileage allowances and practices in effect before the 1975 change. The Review Committee is of the opinion, however, that this case does not fall within the general rule. Applying the rule even-handedly, as it must be if resorted to, would require restitution from those paid more under the new Standard Practice than they are entitled to under the August 1, 1974 Standard Practice. Furthermore, the Review Committee is mindful of the fact that the Labor Agreement provisions are not clear cut, the provisions have never in the past been clarified, and the 1975 change was made in good faith to accommodate the difference in cost to an employee who puts his car at the Company's disposal on a regular basis as opposed to only an occasional or once in a lifetime use. And, while there may be logic for the change, the Review Committee is limited to interpreting the present provisions of the Labor Agreement - leaving such changes to future bargaining when the Labor Agreements permit revision.

With all of this in mind, in addition to the hardship that the application of the general rule would impose on those who would be required to reimburse the Company for the excess allowance paid over the August 1, 1974 rates, the Committee reaches the following final and binding decision resolving the subject grievances and all others dealing with this subject which are filed or may be timely filed prior to execution of this decision:

Review Committee Decision

Effective on the date of execution of this Review Committee Decision, the mileage allowance established August 1, 1974 will be reinstituted, namely, as it applies to bargaining unit employees who use their personal vehicles in connection with their duties, shall be reimbursed as follows:

First 250 miles per month	- 17¢ per mile
251 to 1,000 miles per month	- 12¢ per mile
Over 1,000 miles per month	- 7½¢ per mile

Further, bargaining unit employees who are named in grievances on file as of this date and who were reimbursed on the 11¢ schedule will be entitled to a retroactive adjustment in accordance with the foregoing schedule from January 1, 1975.

On the basis of the foregoing and the adjustments provided herein, these cases, and other grievances as described above, are considered closed.

FOR UNION:	FOR COMPANY:
W. H. Burr E. R. Sheldon L. N. Foss	J. A. Fairchild P. Matthew L. V. Brown
By L. N. Foss	By L. V. Brown
Date Sept 15, 1975	Date Sept 15 1975