

Award No. 1044
Docket No. 984
2-IGN-SAU&G-CM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That carrier violated the controlling agreement dated December 1, 1936, and Rule 15 (c) thereof by refusing to pay expense of H. N. Hopf while he was working at an outlying point April 16 to June 15, 1943, inclusive, in filling temporary vacancy caused by regular man off duty injured; and,

(b) That carrier be ordered to pay expense account of H. N. Hopf for the period between April 16, 1943 and June 15.

EMPLOYEES' STATEMENT OF FACTS: Carman H. N. Hopf who holds seniority as of October 20, 1942 at his home point, San Antonio, was ordered to report to an outlying point, Taylor, for duty April 2, 1943, in place of regularly assigned inspector, M. L. Crow, who was off duty account of injury. Hopf reported as instructed and worked in place of Inspector Crow until the latter returned to duty June 15, 1943. Hopf was allowed expenses from April 2 until April 15, but his claim for expenses from April 16 to June 15 have been declined.

POSITION OF EMPLOYEES: On April 1, 1943, Carman H. N. Hopf was in service as car builder and inspector at San Antonio, when he was ordered to report for duty at Taylor, Texas, an outlying point on the San Antonio Division about 116 miles from San Antonio, to work in place of Inspector M. L. Crow, regularly assigned at Taylor, who had to lay off because of an injury to his foot. Following instructions of his supervisor at San Antonio, Hopf left San Antonio in time to report for duty at Taylor in place of Crow. Hopf turned in expense account for the period from April 2, 1943, to April 15, inclusive, which was allowed. The expense accounts he turned in at each payroll period from April 16 to June 15, were declined altho Hopf had remained continuously on Crow's job until Crow returned to work.

Rule 15 of the current agreement dated December 1, 1936, reads as follows:

"TEMPORARY VACANCIES

Rule 15

(a) Employees sent out to temporarily fill vacancies at an outlying point or shop, or sent out on a temporary transfer to an outlying point or shop, will be paid continuous time from time ordered to leave

In that case Carman Bell was allowed expenses for service performed at Mart prior to his assignment on the position under Bulletin No. 14-A quoted above; he was not, however, allowed any expenses for service performed on that position subsequent to his assignment thereon under Bulletin No. 14-A and the carrier has no record of any claim being presented in favor of Carman Bell for expenses following his assignment on the position under Bulletin No. 14-A.

The two above cited cases, both of which are similar to the case under consideration, involving the same agreement, the same rules and the same agreed to understanding and practice with respect to the sending of men from the home point to an outside point for service, where claim was made in one case for expenses and declined, and in the other case identical with the one under consideration, no claim was made for allowance of expenses and none paid after assignment was made, furnish conclusive evidence that it has not been the practice in the past to allow expenses to employes when performing service at an outside point on a position to which they have been assigned following expiration of bulletin advertising such position; and those two cases also furnish additional evidence in support of the position of the carrier that the provisions of Rule 15 (c), on which this claim is based, are not applicable under the circumstances existing in this case as contended by the employes.

CONCLUSION: The claim of the employes in this dispute should be denied for the following reasons:

1. The carrier has shown that during the period for which claim is made, i. e., April 16 to June 15, inclusive, 1943, Carman Hopf was regularly assigned on the position of car inspector at Taylor.
2. The carrier has shown that the provisions of Rule 15 (c), the rule on which the employes base this claim, are not applicable to employes performing service at an outside point after they have been assigned on the position following the expiration of bulletin advertising such position as a regular assignment; but, rather, were intended to be applied, and have so been applied, where employes are sent to an outside point to fill a temporary vacancy under conditions such as to not make it necessary or practicable to advertise the vacancy by bulletin and make regular assignment.
3. The carrier has shown that in the past it has not been the practice to apply the provisions of Rule 15 (c) to employes performing service at an outside point on positions to which they have been assigned following the expiration of bulletin advertising such position.
4. In view of the above it is the position of the carrier that the contention of the employes should be dismissed and the claim as set forth in the employes' ex parte statement of claim accordingly denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

The record in this case shows the carrier's contention to be that when vacancies occurring at outlying points are bulletined in accordance with Rule 24 and no bids are received, it has been the practice to assign an employe to the position even though he did not bid for it, and that under such circumstances actual necessary expenses for employes' meals and lodging cease to be paid.

The carrier further contends that this is "in line with the agreed-to understanding and practice over a period of several years."

The employes positively deny that there has been any such understanding as claimed by the carrier and hold that there has been no modification of the rule.

Rule 15 reads in part as follows:

(a) Employes sent out to temporarily fill vacancies at an outlying point or shop * * *.

(c) Where meals and lodging are not provided by the Company, actual necessary expenses will be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of December, 1944.