

Award No. 1085

Docket No. 1002

2-D&RGW-MA-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: 1. That within the meaning of the controlling agreement and particularly Rules 31 (a) and 9, Machinist O. L. Jordan has been unjustly dealt with by the carrier in declining to pay his actual necessary expenses while assigned at LaVeta, Colorado, during the period of August 29 to November 29, 1941.

2. That the carrier be ordered to reimburse Machinist O. L. Jordan for the actual necessary expenses incurred at LaVeta for the period August 29, to November 29, 1941.

EMPLOYEES' STATEMENT OF FACTS: A bulletin was posted at the Alamosa, Colorado, shops for one (1) machinist to be employed at LaVeta, Colorado.

At the close of this bulletin, Machinist O. L. Jordan regularly employed at Alamosa, Colorado, was instructed by the general foreman to journey to LaVeta, Colorado, to fill this position although he did not make application for such assignment.

He reported for service beginning August 29, 1941, and remained at LaVeta, Colorado, until November 29, 1941, after which time he was instructed to return to his former position at Alamosa, Colorado.

During such employment at LaVeta, Colorado, Machinist O. L. Jordan submitted an itemized expense account (Form 1137) at the close of each month to the master mechanic at Denver, Colorado, for payment which in turn was not approved.

The master mechanic's letter of October 4, 1942, provides the basis upon which the instant claim has been denied and said communication reads in part as follows:

"I am returning these expense accounts unapproved as under the rule this cannot be paid and the man is not entitled to it, and you should so advise him. LaVeta is under the Alamosa seniority district and in-

shall, if sufficient ability is shown by fair trial, be given preference in filling such positions or vacancies.

NOTE: Assignments of employees in charge of wrecking crews, or as wrecking engineer, will not be considered as vacancies under this rule, and employees for these jobs will be selected by the Management in accordance with the established practice.

(b) All new positions and vacancies shall be bulletined for five (5) days before being permanently filled.

(c) An employee exercising his seniority under this rule, after a fair trial, failing to qualify, shall be permitted to displace only the youngest employee in his craft. In case a new position or vacancy is filled in accordance with this rule, and the applicant fails to qualify, the next applicant in order, qualified to do the work, will be assigned to the position.

(d) If there are no applicants under the bulletin, or if those applying are not sufficiently qualified to do the work, the position will be filled by the assignment of junior employee qualified to do the work.

(e) Employees exercising seniority rights under this rule will do so without expense to the company.

(f) Copy of application filed under a bulletin shall be given to the Local Chairman, if desired."

is controlling in this case and that under the provisions of this rule, any employee sent to an outside point, under the provisions of Paragraph (d) thereof, to fill a new job, is not entitled to expenses.

In conclusion, the carrier contends there is nothing in Rules 31 (a) and 9 which has application to new or permanent jobs and further contends, as previously stated, that Rule 15 is controlling in this dispute. The carrier also contends that other than Rules 10 and 11—the Road Work Rules—there is no rule in the agreement which provides that a regularly assigned employee on a permanent position is entitled to expenses.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The force at LaVeta, Colorado, was increased to the extent of one machinist August 29, 1941, and in accordance with the provisions of the current agreement the position was bulletined. There were no applicants for the position. The claimant, O. L. Jordan, being the junior employee in the seniority district was assigned in accordance with the provisions of the agreement. He remained on the job from August 29, 1941 to November 29, 1941. The claimant asks for his expenses, alleging that the carrier violated the intent and purpose of Rule 9. Rule 9 only covers temporary vacancies. Claimant was not filling a

temporary vacancy, nor was he sent there to fill the place of another employe, nor was he temporarily transferred there to fill a vacancy in an outlying position. There was no violation of the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1945.