Award No. 1430
Docket No. 1359
2-MP-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, particularly Rule 9, and Vacation Agreement, particularly Article 12 (a), Carman C. H. Kitchen was unjustly dealt with when the carrier declined to pay him travel time and for meals and lodging at El Dorado, Kansas, from February 1, 1949 to February 14, 1949, both dates inclusive.

2. That accordingly the carrier be ordered to:

(a) Additionally compensate this employe for travel time from 1:50 A. M. to 6:08 A. M. on February 1 and from 8:30 P. M. to 11:58 P. M. on February 14, in the amount of 7¾ hours.

(b) Reimburse this employe for meals and lodging from February 1 to February 14 in the amount of $43.25.

EMPLOYES' STATEMENT OF FACTS: On January 31, 1949 Carman C. H. Kitchen, and hereinafter referred to as the claimant, was furloughed at him home point, Fort Scott, Kansas. Effective February 1, 1949 Carman I. S. Harrod, employed at El Dorado, Kansas was scheduled to begin his annual vacation of twelve days. A few days prior to February 1 Master Mechanic Hanna called claimant by telephone at his home in Fort Scott, advising him of the vacancy at El Dorado and asked if he would be willing to fill Carman Harrod's place during his absence on vacation. Claimant agreed to fill the vacancy and reported for work at El Dorado on February 1.

When claimant's relief assignment concluded on February 14 he returned to his home point, Fort Scott, following which he filled out Form 1361, mailing it to Master Mechanic Hanna, claiming travel time, meals and lodging expense. On March 21 Master Mechanic Hanna wrote the following letter to claimant:

"Mr. C. H. Kitchen

Yours of March 15 and returning Form 1361 covering expenses while working car inspector vacation period, El Dorado, Kansas.

Therefore, Rule 9, which contemplates "Temporary Vacancies," could not be applicable to periods of time while the regular employe is absent on vacation.

Then again, the last sentence of paragraph (b) of Article 12 states that,

> "When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority."

and that was what was done here. There being no other employes available at El Dorado, we notified the senior furloughed employe, Mr. Kitchen, and gave him the opportunity to perform the work at El Dorado, not under Article 12 of the Vacation Agreement, or Rule 9 of the working agreement, but in accordance with the provisions of Rule 23 of the working agreement which we have previously discussed at considerable length.

Mr. C. H. Kitchen, the claimant here, was a furloughed employe and not a regular vacation relief employe, hence he could have no right to work at El Dorado except under the provisions of Rule 23 of the effective working agreement, and that rule specifically provides that

> ". . . such transfer to be made without expense to the Company, Seniority to govern all cases."

The carrier's side of this dispute may be summed up in the following manner:

1. The claimant had point seniority confined to Fort Scott, Kansas.
2. The claimant was a furloughed employe cut off in force reduction on January 31, 1949.
3. The claimant being a furloughed employe had no enforceable right to work at El Dorado, even temporarily; conversely, the carrier had no enforceable right to compel him, a furloughed employe, to go to El Dorado and perform work where he held no seniority.
4. The only provision in the agreement requiring the carrier to give consideration to the claimant under the facts in this case is Rule 23.
5. There are no provisions in the effective agreement which require the carrier, as a matter of contract to pay a furloughed employe for time waiting or traveling or for meals and lodging.
6. Article 12 of the Vacation Agreement is not applicable to furloughed employes.

Based upon the facts contained herein this claim should be denied as being without support under the effective working agreement, the Vacation Agreement of December 17, 1941, contrary to long continuous practice and wholly without merit as a matter of equity.

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 were given due notice of hearing thereon.

It is believed this case is not to be distinguished from Award 1376. The fact that in the present case the vacancy that was to be filled was a vacation vacancy; whereas in the case covered by Award 1376, it was a special leave, makes no material difference. It is considered that Rule 9 is applicable, as held in that Award. To make Rule 23 operative as contended by the carrier, it would be incumbent on the carrier to notify the man that he was being offered an opportunity to exercise his seniority at his own expense. It is conceivable in such case he would not embrace the opportunity.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman.
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1951.