

Award No. 3799
Docket No. 3231
2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr. when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the current agreement was violated, particularly Rule 9 and Rule 137(b), when a job was established at Salina, Kansas, a one-man point, without bulletin being posted and Carman Fred McCoach, hereinafter referred to as the Claimant, was denied pay for meals and lodging while filling this job at Salina, Kansas.

2. That accordingly, the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, be ordered to compensate the claimant for meals and lodging during the month of July, 1957, in the amount of \$76.50 (See Employees' Exhibit A which is an itemized account) and for August, 1957, in the amount of \$40.50 (See Employees' Exhibit A-1 which is an itemized account).

EMPLOYEES' STATEMENT OF FACTS: First, it is necessary that we acquaint your Honorable Board with all the facts by giving a history of the character of this violation.

This violation revolves around a one-man point, namely, Salina, Kansas. The job at Salina, Kansas was bid in under Rule 137(b) and the claimant had worked this job for a period of approximately three (3) years when the job was abolished by Bulletin #1, later changed in pencil to read 'Bulletin #47', dated May 27, 1957. This bulletin was protested as it was in the form of a lay off instead of the job being abolished. The man laid off was a carman at Osawatomie, Kansas and this lay off took place after the claimant returned to Osawatomie.

At the time the claimant bid in the job at Salina, Kansas it was under the jurisdiction of the master mechanic at Osawatomie, Kansas, which is also the home point of the claimant. However, at the time of the violation, this territory had been placed under the jurisdiction of another master mechanic whose headquarters are in Wichita, Kansas and whose jurisdiction covered Salina, Kansas. Therefore, the men at Osawatomie, Kansas, under the provisions of Rule 137(b) would not have the privilege of again bidding on this job if it was re-established. The claimant was permitted to return to Osawatomie, his home point, at the expiration of Bulletin #1 (penciled #47), holding no

and would not have sent him if it had been necessary to send an employe to Salina under Rule 9.

Although the position at Salina was not bulletined when it was re-established, claimant was permitted to fill the position under Rule 137. Claimant's seniority was "confined to" Salina in accordance with paragraph (a) of Rule 137. He lost his seniority at Osawatomie but permitted to return to Osawatomie, his home station, with his former seniority rights when the work terminated at Salina. An employe sent out under Rule 9 does not lose his seniority and position at his home station but no such contention has been made on behalf of claimant. When an employe fills a position at a one man point, the location of the position becomes his headquarters and no expenses are due the employe while at his headquarters. The expenses claimed are for meals and lodging which, apparently, were incurred while he was living at home and certainly while at the headquarters of his position.

The carrier thought it was being considerate of claimant when he was permitted to occupy the position at Salina where he maintained his home. Certainly the facts do not support the allegation that claimant was "sent" to Salina. It follows that the claim was based on an alleged violation of Rule 9 is not supported by the facts. Certainly the claim is entirely lacking in merit, therefore, the claim should be 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.

Parties to said dispute were given due notice of hearing thereon.

When the carman's position was re-established at Salina, Kansas effective July 15, 1957 the carrier failed to bulletin the job as it was required to do under Rule 137(b) of the shop crafts agreement. At that time Salina was within the jurisdiction of the Master Mechanic at Wichita, and the claimant's home station at Osawatomie, Kansas was under the jurisdiction of the Master Mechanic at that point. Bulletining of the Salina opening was not required to be made within the claimant's seniority district and consequently failure to bulletin the job did not deprive claimant of any contractual right to bid for the Salina position.

The record reveals that claimant had filled the carman's position at Salina, an outlying point, for two or three years immediately preceding June 3, 1957, at which time the job was abolished and claimant returned to his home station at Osawatomie where he held seniority rights. The carrier re-established the carman's position at Salina in July to take care of seasonal requirements. Claimant's place of residence was and had been for some time at Salina and he expressed a desire to resume working the new position at Salina. No other carman in the territory of the Wichita Master Mechanic indicated an interest in the Salina job, and claimant was assigned to it and covered the assignment from July 15 to August 12, 1957 when the carrier again abolished the position. Claimant seeks payment for meals and lodging at Salina from July 15 through August 9, 1957 on the basis of Rule 9 of the effective agreement.

The carrier's position that claimant filled the job at Salina during July and August under Rule 137 lacks support in the record. The underlying principle of Rule 137 is that Claimant was ineligible to bid for the Salina opening within the spirit of the rule. He retained no seniority rights at Salina under the carmen's agreement and hence was not assignable under Rule 137.

On the facts and circumstances shown of record in this case we think that claimant was sent from his home station at Osawatomie to Salina within the meaning of Rule 9. Rule 9(c) provides that in such circumstances "where meals and lodging are not provided by the company actual necessary expenses will be allowed." The question is, were the meals and lodging at Salina for which payment is sought, actually and necessarily incurred by the claimant because of his assignment at Salina. The objective of Rule 9 in this respect, is to reimburse an employe who is put to additional expense by being away from his place of residence which is ordinarily at his home station, in performing work to which he was sent by the carrier. Here, instead of being sent away from his place of residence, the claimant was in fact assigned to work at his place of residence, and the record fails to disclose that he was put to any additional expense on account thereof. The claim for payment lacks support.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1961.