Award No. 3858

Docket No. 3750

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the 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 (Gulf District)

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement, particularly Rule 14 was violated when Carman P. L. Flores was denied actual expenses at Taylor, Texas from January 31st through April 11, 1959, inclusive.

2. That accordingly, the Missouri Pacific Railroad Company (IGN) be ordered to compensate Carman P. L. Flores his actual expenses amounting to $370.50 for meals and lodging from January 31st through April 11th, 1959, inclusive.

EMPLOYES' STATEMENT OF FACTS: Carman E. L. Johnson is regularly employed by Missouri Pacific Railroad Co., (IGN), hereinafter referred to as the carrier, as a carman at Taylor, Texas, an outlying point located 115 miles northeast of San Antonio, Texas, with hours of assignment 4:00 P. M. to 12:00 Midnight, Thursday through Monday, rest days Tuesday and Wednesday. In the month of January 1959, Carman Johnson became sick, necessitating his absence from duty. The carrier bulletined Carman Johnson's position at Taylor as a temporary vacancy under the provisions of the controlling agreement, but failed to receive any application therefor.

Failing to receive any application for the temporary vacancy, the carrier called the senior furloughed carman at San Antonio, Carman P. L. Flores, hereinafter referred to as the claimant and sent him to Taylor to fill the temporary vacancy created by Carman Johnson's sickness.

Claimant reported to Taylor, Texas, in line with instructions of carrier on January 31, 1959 and continued to fill the temporary vacancy through April 11, 1959.

During the period Claimant was at Taylor, Texas, an outlying point, filling the temporary vacancy at the direction of the carrier, the carrier did not provide him with meals and lodging and when claimant turned in his

1. The temporary vacancy at Taylor was caused by the illness of Carman E. L. Johnson who was regularly assigned thereto.

2. The temporary vacancy was for more than fifteen (15) days.

3. Rule 24(a) and the "Note" therein required the carrier to bulletin said temporary vacancy, which was done.

4. No bids were received.

5. Claimant was the senior furloughed carman at San Antonio, a shop point.

6. Claimant was offered the opportunity to transfer to Taylor pursuant to the provisions of Rule 6.

7. Claimant accepted the offer of work at Taylor pursuant to Rule 6.

8. Rule 6 provides that " * * * such transfer to be made without expense to the Company."

9. Rule 14, relied upon by the employes, is not applicable for the reasons set forth in this submission.

In light of the foregoing it is the position of carrier that Rule 14 has no application in the case here involved; that the claim presented for expenses while working at Taylor is without basis and accordingly 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.

This claim involves the same parties and rules as Award 3852 and essentially similar circumstances except that the temporary vacancy which claimant was sent out "to temporarily fill" was not a temporary vacancy under bulletin, but one which had been bulletined, but for which no application was received. As a furloughed employe he was not permitted to bid, but was contacted and agreed to go to the outlying point.

The same arguments were made as in the award above mentioned, with the further contention that since on the Gulf Division carmen have division seniority rather than point seniority they are "obligated to protect work any point on the division just the same as if it were their home point." The only effect of that argument is to indicate that claimant's going to the outlying point was in no sense voluntary but was effected with the understanding that he had no choice.

Certainly Rule 14 applies equally throughout the property, and there is no contention that where seniority is division-wide the rule is to be interpreted

as having a different meaning. Clearly the purpose of Rule 14(c) is to protect the employe against the extra expense of meals and lodging away from home, whether within the same division or not.

Awards 2741 and 3625 are not applicable, for there each claimant was the successful bidder for the temporary vacancy, and therefore received it in exercise of seniority rights, which is not true of claimant here, who received it because of the absence of any bidder.

The point is also raised that one step of the appeal procedure was not taken within the sixty day period prescribed by Article V, 1(b) of the National Agreement of August 21, 1954. But the Carrier continued to handle the claim on the property upon the merits, without any contention that under the provision mentioned it was considered closed. Therefore the objection was waived and cannot be raised for the first time before this Board. Award 1834.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.

DISSENT OF CARRIER MEMBERS TO AWARD No. 3858

The record in this docket shows and the majority so state that claimant, having been laid off in force reduction, was "a furloughed employe." The Railway Labor Act defines the term "employe" as including "every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employe or subordinate official in the orders of the Interstate Commerce Commission now in effect . . ." A person who has been laid off in force reduction and is not working for his employer is not subject to the employer's continuing authority to supervise and direct the manner of rendition of his service. Therefore, claimant was not, by definition, an "employe" at the time he was "contacted and agreed to go to the outlying point."

The majority erred in applying Rule 14(c) to the claimant since the rule applies only to "employes" sent out to temporarily fill vacancies at an outlying point.

The majority also erred in holding that Rule 14(c) gives employes expenses for meals and lodging while away from the place where he lives or, in the words of the majority, his "home." The rule is intended to reimburse an employe for his necessary and actual expenses while away from his regular place of employment, his so-called home point. When claimant was re-employed, his regular place of employment was Taylor and claimant is not entitled to expenses while working at his home point.

Article V, 1(b) of the National Agreement of August 21, 1954, provides that claims shall be considered closed unless presented timely. It is the duty of this Board to interpret the agreements in effect between the parties. Since

the Employes failed to comply with the time limit rule, the claims should be considered closed. See Third Division Award 8886. The award, by failing to apply the provisions of the agreement, exceeds the authority of this Board.

For the reasons stated, we dissent.

W. B. Jones

H. K. Hagerman

D. H. Hicks

P. R. Humphreys

T. F. Strunck