Award No. 4319
Docket No. 4044
2-MP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood 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

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement particularly Rule 9, and the Vacation Agreement particularly Article 12(a), were violated when Carman Helper Feliciano Castillo was denied payment for actual expenses (meals and lodging) at Prairie du Rocher, Illinois, starting June 21st through July 11th, 1960.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Helper Feliciano Castillo in the amount of $85.60 for meals and lodging from June 21st through July 11, 1960 while filling vacation vacancy at Prairie du Rocher, Illinois.

EMPLOYES' STATEMENT OF FACTS: Prairie du Rocher, Illinois is a point on the Missouri Pacific Railroad, hereinafter referred to as the carrier, coming under the jurisdiction of Master Mechanic, Mr. H. Jamison, who is located at Poplar Bluff, Missouri. When a car helper at Prairie du Rocher, Illinois went on his annual vacation starting June 21st through July 11th, 1960, inclusive, Carman Helper Feliciano Castillo, hereinafter referred to as the claimant, San Antonio, Texas filled this job and was paid the regular rate of pay while at Prairie du Rocher, of which there is no dispute. Prairie du Rocher is a distance of over 1000 miles from San Antonio, Texas.

After completion of this job, the claimant upon return to home point turned in Form 1361 to Master Mechanic Jamison, but he refused to allow the claimant actual expenses for meals and lodging in the amount of $85.60 while filling the vacation vacancy at Prairie du Rocher June 21st through July 11th, 1960, and is, therefore, the basis of the case before your Honorable Board.

This matter has been handled up to and including the highest designated officer of the carrier who has declined to adjust the matter.

The Agreement effective June 1, 1960, as subsequently amended, is controlling.

Claimant was not the carman helper with the earliest seniority date with a form on file. Carman Helpers Conrad and Magers had earlier dates. Accordingly, first, Conrad and then Magers were notified to report but each was unable to report. Claimant was then notified on June 14 to report to Prairie du Rocher at once. Note the form letter makes it clear the claimant was being notified in line with Rule 23 pursuant to his request. The form reads

> "In accordance with your application for transfer under Rule 23 of the Agreement, please arrange to report on the effective date, or as early as possible thereafter within the 15 day period provided by the Agreement."

Claimant reported at Prairie du Rocher June 21 and worked through July 11. Since claimant had transferred from San Antonio to Prairie du Rocher under Rule 23, claimant is not entitled to reimbursement for expense of meals and lodging at Prairie du Rocher because the rule is specific such transfers are "to be made without expense to the company." It follows the claim must be declined

The employes' statement of claim alleges

> "That the current agreement, particularly Rule 9, and the Vacation Agreement, particularly Article 12(a), were violated . . ."

The vacancy at Prairie du Rocher was not the result of Carman Helper Parks being on vacation but resulted from Parks being upgraded to work in the place of a car inspector at Chester. The Vacation Agreement including Article 12 thereof is not involved in this dispute.

Rule 9 of the basic agreement is not involved in this dispute either. Rule 9 applies to employes who are instructed by the carrier to leave their jobs where employed and temporarily fill a position at an outlying point. The rule does not apply to claimant because he was furloughed at the time he transferred to Prairie du Rocher and was not sent by management. He was notified of the work opportunity at Prairie du Rocher pursuant to his right to transfer under Rule 23. Your Board has held that rules similar to Rule 9 do not apply to furloughed employes where vacation vacancies are not involved. See Awards 2518, 3447 and 3448. Rule 9 is not involved in this dispute.

When claimant accepted the work opportunity at Prairie du Rocher, that point became his headquarters. An employe is not entitled to expenses while working at the headquarters of his position. Employes transferring under Rule 23 are not entitled to expenses. This claim for expenses is not supported by any rule in the Agreement and must 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.

Feliciano Castillo, of San Antonio, Texas, Claimant here, a Carman Helper with seniority dating from January 17, 1952, was laid off in force reduction on March 11, 1957, and did not work for Carrier thereafter until the vacancy with which we are concerned here occurred in June, 1960, at Prairie du Rocher, Illinois, some 1000 or so miles from Claimant's home.

Rule 23 of the Controlling Agreement reads:

"TRANSFERRING MEN WHO HAVE BEEN LAID OFF: Rule 23. (a) While forces are reduced, if men are needed at any other point, such men as are laid off by reason of force reductions will be given preference to transfer with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company. Seniority to govern all cases."

Pursuant to Rule 23, Claimant executed and placed on file with Carrier a printed form for such purpose requesting that he "be given preference to transfer to other points where employment is available as provided in Rule 23." He also stated thereon that he was willing to accept work "anywhere on Missouri Pacific Railroad" * * * "including temporary vacancies of less than 30 days." The Carrier's notification form, sent to Claimant June 14, 1960, stated that a temporary vacancy for a Carman Helper existed at Prairie du Rocher, Illinois, effective "at once for approximately four weeks" and that Claimant should arrange to report in accordance with his application for transfer under Rule 23 of the Agreement. This he did on June 21 and worked through July 11, 1960. Claim was filed for his meals and lodging while he worked at Prairie du Rocher. It was denied and has been appealed to this Board.

In Employes' Rebuttal, it is admitted that all reference in this claim to Article 12(a) of the Vacation Agreement should be deleted. However, in support of this claim, Employes cite Rule 9, the pertinent portions of which read as follows:

"TEMPORARY VACANCIES: Rule 9. (a) Employes 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 home point to time of reporting at point to which sent, straight-time rates to be paid for straight-time hours at home station and for all other time, whether waiting or traveling.

"* * *

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

"(d) On the return trip to the home point, straight time for waiting or traveling will be allowed up to the time of arrival at the home point."

However, Rule 9 applies to "Employes * * *" and here we find that, before being notified of the vacancy in question, Claimant was not an "em-

ployе", in the strict sense of the word, having ceased to be such when laid off in 1957. The Railway Labor Act defines "employe" as:

> "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. * * *"

And no longer being such employe in June, 1960, Claimant perforce had no "regular assignment", something which, as evidenced by correspondence between the parties that appears in the record, had been agreed upon by them as being necessary with reference to Rule 9 — i.e. that said rule applies only to employes having a regular assignment.

Furthermore, under Rule 9, it is necessary that the employe be "sent out". It is evident, of course, that claimant was not "sent out". He was not instructed by someone in authority to go to Prairie du Rocher; he went voluntarily, not by order. He went of his own volition in response to notification that a vacancy had opened up where his services could be used — this, in accordance with his application for transfer under Rule 23 to some point where employment should become available.

By way of conclusion from the above analysis, this Board is of the opinion that in the case before us there was no violation of the Agreement, particularly Rule 9, for that rule does not apply, and under Rule 23, directly pursuant to which the parties had their dealings, a claim for expense is not allowable. Therefore, we may not sustain this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1963.

DISSENT OF LABOR MEMBERS TO AWARDS Nos. 4319 and 4320

The statement of the majority that . . . "Claimant was not an 'employe' " is not comprehensible. The second paragraph of the findings states 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." Furthermore, if the claimant was not an employe the Adjustment Board would not have jurisdiction but the third paragraph of the findings states "This Division of the Adjustment Board has jurisdiction over the dispute involved herein."

The correspondence relied on by the majority in reference to "regular assignment" has no bearing on the dispute. Rule 9 of the governing agreement makes no reference to "regular assignment" and the agreement was signed

subsequent to the letters containing the words "regular assignment." That it was not intended that they be part of the agreement is further evidenced by the fact that Rule 9 in the consolidated agreement effective June 1, 1960 was carried forward from the previous agreement of September 1, 1949 without any change in the wording and therefore no reference was made to "regular assignment."

It is obvious that the findings and awards are erroneous.

/s/ C. E. Bagwell
/s/ T. E. Losey
/s/ James B. Zink
/s/ E. J. McDermott
/s/ R. E. Stenzinger