Award No. 5914
Docket No. 5706
2-DM&IR-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Arthur Stark when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 71, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (CARMEN)

DULUTH, MISSABE & IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That in violation of the current agreement, the carrier has declined to properly compensate carman, P. A. Larson, for his actual necessary expenses during the filling of a temporary position at Biwabik, Minnesota, from July 18 through 28, 1967.

2. That accordingly, the Carrier be ordered to additionally compensate the aforementioned employe for a total of $86.32 which represents the following expenses:

   (a) $54.00 for meals.

   (b) $32.32 for mileage driving his automobile from his home point to point of temporary assignment.

EMPLOYES' STATEMENT OF FACTS: Carman P. A. Larson, hereinafter referred to as the claimant, is employed by the Duluth, Missabe and Iron Range Railway Company, hereinafter referred to as the carrier. The carrier's range of operation is divided into two divisions for seniority purposes, which are called the Iron Range Division and the Missabe Division.

A vacancy occurred at Biwabik, Minnesota (Iron Range Division) due to Carman A. Johnson being assigned to take his annual ten (10) day vacation. Because the carrier did not have a regular assigned vacation relief worker on the Iron Range Division, carrier's Superintendent Lewis arranged for a conference to discuss the matter with the local chairman and committee at Proctor (Missabi Division). The parties reached an agreement whereby it was understood that all furloughed employes then working on the Missabi Division who held seniority rights on the Iron Range Division would be asked to volunteer to accept the vacation relief vacancy at Biwabik (Iron Range Division) in accordance with their seniority.

It was also understood at conference that the senior man desiring the temporary position would be awarded the job and be compensated as per Rule

The carrier submits that had a promise been made that expenses would have been paid, this case would not now be before your board; it would have been paid at the outset without the submission of a claim.

The employees, in handling of the claim on the property, have referred to Rule No. 28. This rule has no application in this case. Carrier has shown that an understanding was reached with the employees, which afforded the employees to take the position at Biwabik without questioning whether the loss of seniority was involved if they declined or accepted the position. Therefore, rule 28 has no relevancy in this case.

In conclusion, the claim of the employees is without merit for the following reasons:

1. Expenses are only payable when an employee who is regularly assigned at a point or shop is required to temporarily fill a position at another point or shop or is by direction of the Carrier temporarily transferred to another point or shop.
2. Claimant was not a regularly assigned employee on the Iron Range Division. He was in a furloughed status on that division.
3. Claimant was neither directed nor required by the carrier to fill the Biwabik position.
4. Claimant volunteered as is evidenced in the local chairman's letter dated October 9, 1967 and Mr. Bongiovanni's letters of January 15 and March 5, 1968, with attachment thereto.
5. Rule 28 cited by the employees is not pertinent.
6. Other arguments and material presented by the employees are immaterial and irrelevant as the determination of this case must be made on the clear and unambiguous language of Rule 12.

In view of all the facts and circumstances shown by the carrier, the carrier respectfully requests that your Honorable Board deny the claim of the employees.

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 waived right of appearance at hearing thereon.

The carman at Biwabik, Minnesota, (Carrier's Iron Range Division), was scheduled for vacation July 18 through 29, 1967. No one in that Division was available for vacation relief. However, many Iron Range Division employes, including P. A. Larson, had been furloughed and were then working on Carrier's Missabe Division. These men retained seniority rights to Iron Range Division work. (Rule 26(e): "When forces are restored, furloughed employes will be recalled to service according to their seniority rights. . . .")

Carrier and Organization representatives discussed the possibility of offering furloughed Iron Range men—then working in the Missabe Division—

the opportunity of filling the vacation vacancy. Their intent was to avoid, if possible, any dispute concerning the forfeiture of Missabe Division seniority by any employe receiving such an assignment. Agreement was reached and furloughed men on the Missabe list were canvassed in seniority order. The seventh to be asked—P. A. Larson—accepted. He was then No. 31 (of 82) on the Iron Range Seniority Roster and No. 115 (of 128) on the Missabe list.

Larson worked the relief assignment. After returning to this Missabe Division post, he submitted an expense report for $86.32, claiming $32.32 for mileage (four round trips from Procter to Biwabik) and $54.00 for meals ($6.00 a day for 9 days). This expense claim was denied.

During the processing of this claim on the property, Petitioner alleged that Carrier had (1) violated a verbal agreement with the Organization and Larson that he would receive expenses, and (2) violated paragraph (c) of Rule 12, Temporary Work Away From Home Point or Shop:

> "(c) Where meals and/or lodging are not provided by the Carrier, actual necessary expenses will be allowed when such service makes it necessary for employes to purchase meals and/or lodging."

It seems clear that Rule 12 cannot be applied here, however, since it is designed to cover ". . . an employe regularly assigned at a point or shop who is required by the Carrier to temporarily fill a position at another point or shop, or is by direction of the Carrier temporarily transferred to another point or shop . . ." (Rule 12 (a)). Claimant was neither the junior nor senior Carman among those canvassed and, unquestionably, he voluntarily accepted the two-week assignment. Thus, he was not required or directed to work at Biwabik.

Regardless of the above, had Carrier's representatives agreed to pay Claimant expenses, we would sustain his claim. But the evidence is conflicting: In his December 22, 1967 appeal to Carrier's Chief Mechanical Engineer, petitioner's General Chairman alleged that the parties had agreed that "senior man desiring that position would be awarded the job and will be compensated as per Rule 12 of the current agreement. . . Mr. Larson has accepted this position with the understanding that he would be compensated for his expenses as per Rule 12 . . ." The Chief Mechanical Officer replied on January 4, 1968, that the "Car Superintendent advises that neither he nor any member of his staff advised Mr. Larson that he would get expenses while working at Biwabik . . ." In his January 15, 1968 appeal to Carrier's Director of Labor Relations, the General Chairman reiterated that "Mr. Larson accepted this position with the understanding that he would be compensated in accordance with Rule 12 . . ." The Director's January 30, 1968 reply: ". . . we have investigated and find no evidence that the Claimant was so advised."

After the final appeal on the property, the Organization submitted to Carrier an undated, unnotarized statement of Claimant affirming in part that: "I then went to the office with E. Renaud to see if I would be entitled to expenses. Mr. Renaud, in my presence, asked Mr. Vanneste if I would get expenses for going to Biwabik. His reply was, "yes, the rules provide for it. I then accepted the assignment. . . ."

Although not specifically identified, Mr. Vanneste was evidently the General Car Foreman and one of the Car Superintendent's staff referred to in Carrier's January 4, 1968 denial. Thus, even were we to accept this tardily-submitted evidence, the conflict still remains. Since the evidence is inconclusive, Petitioner's claim cannot be sustained.

It is true that several claims for furloughed men, somewhat similar to the one here, have been sustained under provisions of Article 12 (a) of the National Vacation Agreement. But no claim under that Agreement was presented during the processing of this claim on the property. We therefore do not consider it appropriate to rule on Petitioner's Vacation Agreement arguments presented for the first time in its submission to this Board.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

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