

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 10, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, The Denver and Rio Grande Western Railroad Company improperly compensated Mr. Fidel Lopez, Hostler Helper, Grand Junction, Colorado, during his vacation of 20 days (December 3 thru 28, 1976); when deducting \$1.00 per diem from his normal rate of pay.
2. That, accordingly, The Denver and Rio Grande Western Railroad Company be ordered to compensate Hostler Helper Fidel Lopez, \$1.00 per each of the 20 days vacation (or a total sum of \$20.00).

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 pivotal question before this Board is whether or not the daily compensation paid Claimant prior to his vacation included the \$1.00 allowance permitted under the July 1, 1975 Outside Hostler's Agreement. This understanding provides that:

"And it was agreed that effective July 1, 1975, when a mechanical department laborer at Grand Junction, Colorado is required by proper authority during his eight hour tour of duty to assist a hostler in outside move(s) with unit(s) that he will be paid an allowance of one dollar (\$1.00) - said allowance payable only once in the course of a tour of duty. Carrier reserves the right to use laborers for this work in its sole discretion."

Claimant asserts that he was entitled to this amount when he was on vacation from December 3 to December 28, 1976 as per the terms of the aforesaid stipulation and Agreement Rule 33 (Vacations) since he was asked on a daily basis before his vacation to assist the hostler make outside moves and was compensated the \$1.00 allowance.

Contrawise, Carrier contends that the July 1, 1975 Agreement applies in the specific case of extra pay for laborers helping a hostler at Grand Junction and that the \$1.00 allowance is compensable only when a laborer is directed to assist a hostler in outside hostler moves.

In reviewing this case, we note as a matter of judicial necessity that the claim before this Board is somewhat different from the claim originally submitted on the property which requested the \$1.00 allowance for assisting an outside hostler. The claim before us argues that Carrier deducted \$1.00 per diem from his normal rate of pay and does not allude to the July 1, 1975 Agreement. Inasmuch, as we agree with Carrier's perception regarding this modification, we believe that the claim is properly before us since Claimant frequently mentioned this Agreement on the property, but did not refer to Section 7(a) of Rule 33 until the claim was appealed to the Division. He did, however, refer to Sections 7(b) and (e) respectively during the claims' on situs handling. We will thus deny Section 7 (a)'s admissibility herein consistent with the clear requirements of Circular No. 1.

In this case, we agree with Carrier that the July 1, 1975 Agreement is in effect a specific rule that applies only to Grand Junction, Colorado and becomes operative only when a mechanical department laborer is required by proper authority to assist a hostler in outside moves. Claimant was not directed by a supervisory official to perform this work during his vacation and is simply not eligible for this allowance. Moreover, this allowance was never included in his daily rate, nor part of the compensation paid for such assignment. It was in addition to such compensation and provided for work that was outside of his assignment. For these reasons, we must deny the claim.

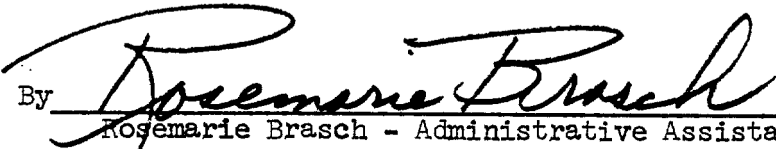
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of April, 1980.