

Award No. 1400
Docket No. 1322
2-CStPM&O-MA-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 75, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement Machinist Charles A. Anderson was improperly compensated while assigned temporarily to fill vacancy of a working foreman at Mitchell, South Dakota, an outlying point, for the period October 1, 1947, through February 7, 1948.

2—That accordingly the carrier be ordered to additionally compensate this employe in the amount of:

- a) Waiting and traveling time from Sioux City, Iowa, to Mitchell, South Dakota, at the beginning of his aforementioned assignment.
- b) Waiting and traveling time from Mitchell, South Dakota, to Sioux City, Iowa, at the end of his aforementioned assignment.
- c) Actual expenses incurred during his assignment period at the outlying point aforesaid.

EMPLOYEES' STATEMENT OF FACTS: Machinist Charles A. Anderson, hereinafter referred to as the claimant, regularly employed by the carrier at Sioux City, Iowa, during the hours of 7:30 A.M. to 4:30 P.M. with a seniority date of 6-21-28, was assigned temporarily to fill the place of Working Foreman Donald M. Rask during his vacation period of October 1 to 15, 1947, at Mitchell, South Dakota. However, the claimant's temporary employment there was continued until about February 7, 1948, because Mr. Rask became ill and was never able to resume his position at Mitchell, but whose position was permanently filled by the carrier on February 5 or 6, 1948, with Machinist Jack Knox from St. Paul shops, and thereupon the carrier returned the claimant to Sioux City, his home point.

The carrier maintained at Mitchell, South Dakota, one working foreman, one engine watchman, one coach cleaner, and in addition thereto, maintains freight steam locomotives and one passenger gas electric motor car for daily operations, exclusive of Sundays. The mechanical service required of Mr. Rask prior to October 1, 1947, and of the claimant while he was at Mitchell, is disclosed in copies of the submitted Exhibits A and B, dated April 11 and

claimant the full benefits of the provisions of above Rule 12-T, and accordingly the Honorable Members of this Division are respectfully requested to sustain the statement of claim in its entirety.

CARRIER'S STATEMENT OF FACTS: Charles Anderson, machinist, Sioux City, Iowa, prior to October 1, 1947, made request on superintendent, motive power and machinery, for consideration in filling a supervisory position and as there would be a temporary vacancy in the foreman's position at Mitchell, South Dakota, on or about August 17, 1947, due to regular incumbent of that position taking his annual vacation, Anderson was offered the temporary vacancy indicating, however, that he would accept with the understanding that his expenses would be paid during that period. He was informed at that time that mechanics filling temporary vacancies of supervisors are not allowed expenses while away from home station. Anderson decided nevertheless to accept the temporary vacancy without reimbursement for expenses incurred. It developed, however, that the regular incumbent of foreman's position did not start on his vacation until October 1, 1947, and due to illness did not return to his assignment at the end of his vacation period, resulting in Anderson remaining on said position until February 7, 1948.

Claimant Charles A. Anderson was given and accepted the opportunity of filling the vacancy in foreman's position during absence of regular assignee.

The employes are now claiming allowance as indicated under "Statement of Claim" above, basing such claim on provisions of Rules 12-T, 19-T and 30-T of current federated crafts' agreement.

POSITION OF CARRIER: It is the position of the carrier that on basis of the facts here in evidence this Division of the Board has no jurisdiction and should dismiss the case; however, if this Division of the Board does take jurisdiction then the carrier offers the following:

The sole question here for determination is whether rules as contained in current federated crafts' agreement are applicable in instances where mechanics are promoted and used to fill temporary vacancies in foreman's positions and compensated at rates of pay and under rules applicable to foreman's positions coming within the scope of an agreement between the carrier and The American Railway Supervisors Association, Inc.

As previously stated, Anderson advised the superintendent, motive power and machinery, prior to October 1, 1947, that he was desirous of advancing himself to a foreman's position and as the position at Mitchell became vacant on a temporary basis he was notified of that fact and on his own request accepted assignment thereto with the understanding that there would be no allowances for expenses while away from home point.

It is the position of the carrier that when Anderson accepted promotion to position of foreman at Mitchell, a position coming within the scope of the supervisors' agreement, his hours of service and working conditions are governed by rules as contained in that agreement and that rules as contained in the federated crafts' agreement do not and cannot properly be applied.

It has not been the practice over the years to pay expenses to mechanics when promoted to and while filling temporary vacancies in supervisory positions such as in the instant case. We repeat—Anderson accepted the temporary vacancy in foreman's position at Mitchell with the definite understanding that no expenses or travel time would be allowed.

In view of the fact that rules as contained in current federated crafts' agreement are not here involved, this Board cannot do otherwise than deny the claim or dismiss the case for lack of jurisdiction.

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.

The parties to said dispute were given due notice of hearing thereon.

The circumstances presented in this proceeding are not expressly covered by provisions of the effective agreement relied upon by petitioner. The situation, therefore, is not comparable with that appearing in Award 834. Rather the circumstances presented in this case are comparable with those appearing in Award 832. Herein claimant was not sent, assigned, transferred or required to take the position of foreman. Upon his own solicitation he was considered for promotion to the position of foreman as provided in Rule 19-T. Thereafter, voluntarily and concededly with full notice and knowledge that he would not be paid any waiting and traveling time, or actual expenses, he accepted the opportunity afforded and went to Mitchell, South Dakota, to work as a foreman.

There he did foreman's work and was paid therefor from October 1, 1947, through February 7, 1948, at foreman's rate under the provisions and within the scope of an agreement between the carrier and The American Railway Supervisors Association, Inc. In other words, during such period claimant worked not as a machinist but as a foreman, received foreman's pay as such and was a foreman in a class or craft of employment not within the scope of or covered by the provisions of the effective agreement here relied upon by him.

In the light of the foregoing and the record before it the Division concludes that the claim should be and is denied.

AWARD

Claim denied per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1950.