

**Award No. 3625**

**Docket No. 3188**

**2-MP-CM-'60**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**MISSOURI PACIFIC RAILROAD COMPANY—GULF DISTRICT**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement Carman R. T. Dowdy was improperly denied reimbursement for actual necessary expenses incurred while filling temporary vacancy at Velasco, Texas, during the months of April and May, 1957.
2. That accordingly, the Carrier be ordered to reimburse Carman R. T. Dowdy in the amount of \$316.20 for actual necessary expenses incurred while filling said temporary vacancy at Velasco, Texas.

**EMPLOYEES' STATEMENT OF FACTS:** R. T. Dowdy, hereinafter referred to as the claimant, is employed by the Gulf Coast Lines of the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, and holds seniority as carman at his home seniority point, Kingsville, Texas.

Carman L. T. Reyna, who was regularly assigned to a position of carman at Velasco, Texas, laid off sick, following which the carrier posted a bulletin advertising his position as temporary, copy of which is submitted herewith and identified as Exhibit A.

Carman Leon Avelar, who also held a regular carman position at Velasco, Texas, applied for the position and was assigned by bulletin, dated March 6, 1957, copy of which is submitted herewith and identified as Exhibit B.

Due to the fact that Carman Avelar was assigned to a position temporarily vacated by Carman Reyna, a temporary vacancy was created on the position of Carman Avelar, which was bulletined, copy of which is submitted herewith and identified as Exhibit C.

Under date of April 8, 1957, bulletin was posted assigning the claimant to the position at Velasco, Texas, temporarily relinquished by Carman Avelar, copy of such bulletin is submitted herewith and identified as Exhibit D.

Bulletin No. 13-A which assigned claimant thereto April 8, showing Leon Avelar assigned to other duties.

Claimant was well aware of the fact that the vacancy at Velasco was a temporary one, even though it was not so specifically shown—that fact was clearly evident from the wording of the bulletin. Claimant had previously been cut off at Vanderbilt following which he went to Kingsville and was working the position at Kingsville advertised by Bulletin No. 14, supra. He could have retained this job at Kingsville, but he elected to take the one at Velasco.

We wish to also point out here that Carman Lawrence, who also had been cut off at Vanderbilt, wanted to go to Velasco on the vacancy in question, but since claimant was senior to Lawrence in point of service he (Dowdy) was assigned thereto.

Rule 14 relied upon by the employees was not designed to cover situations of the character here involved. That rule was designed for the handling of temporary vacancies under circumstances where a position must be filled quickly but there is not sufficient time to fill the position by bulletin. For example, a carman at a one man point is ill and it is necessary to fill the position. A regularly assigned carman who can be spared from a repair point such as Kingsville is sent out to fill the temporary vacancy. The carman taken off his regular assignment and sent to the outside point is paid expenses until the position is filled by bulletin, the regularly assigned carman returns or his services for any reason are no longer needed at the outside point. Therefore, it has no application here because the vacancy at Velasco was one that was bulletined and filled in accordance with Rule 24. Obviously, the vacancy at Velasco does not come within the provisions of both Rule 24 and Rule 14. A reading of Rule 14 should clearly demonstrate that it was not designed to nor does it cover a situation such as here involved where a position because of its known duration must be and was bulletined in accordance with and as required by Rule 24.

In the case under consideration we have shown that:

- 1) The vacancy at Velasco was bulletined in accordance with Rule 24;
- 2) Claimant made application for the position and was assigned thereto in the exercise of his seniority rights account being the senior employe desiring the vacancy;
- 3) Rule 24 (b) provides that an employe exercising his seniority rights under the rule will do so without expense to the Railroad.

If Rule 24 is not applicable in this case then we, frankly, are at a loss to understand in what situation it would be applicable.

In light of the foregoing it is the position of carrier that under the circumstances here existing Rule 24 is clearly the governing rule and that under the provisions thereof the claim here presented is without basis and should therefore 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.

The undisputed facts of record bring this case within the reach of Rule 24 which provides that if an employe exercises his seniority rights by successfully bidding on a temporary vacancy of more than 15 days' duration, he will do so without expense to the Railroad. This Rule bars the instant claim.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1961.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 3625

The majority admits that the instant vacancy was a temporary vacancy but erroneously concludes that Rule 24 bars the instant claim. Rule 14 (c) is the governing rule in this case and requires "Where meals and lodging are not provided by the Company, actual necessary expenses will be allowed;" the claim should therefore have been sustained.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink