Award No. 3852
Docket No. 3620
2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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—GULF DISTRICT

DISPUTE:—CLAIM OF EMPLOYES:

1. That the current agreement, particularly Rule 14 was violated when upgraded Carman, Earnest Resendez, was denied actual expenses at Taylor, Texas from September 23 to October 3, 1958, inclusive.

2. That accordingly, the Carrier be ordered to compensate Upgraded Carman Earnest Resendez his actual expenses amounting to $69.00 for meals and lodging from September 23 to October 3, 1958, inclusive.

EMPLOYES' STATEMENT OF FACTS: Mr. Earnest Resendez, hereinafter referred to as the claimant, was employed at San Antonio, Texas, as a carman apprentice for the Missouri Pacific Railroad (IGN), hereinafter referred to as the carrier. Claimant had been furloughed and was recalled to service in line with his seniority as a carman apprentice, subsequently upgraded to carman and sent to Taylor, Texas, an outlying point 115 miles northeast of San Antonio to fill a carman vacancy temporarily while said vacancy was under bulletin.

Claimant reported to Taylor, Texas, in line with instructions of carrier on September 23, 1958 and filled temporarily the vacancy advertised in Bulletin No. 43 dated September 19, 1958. On September 25, 1958, Carman J. B. Fry, Jr., was permanently assigned to the vacancy by Bulletin No. 43-A.

Carrier next under date of September 25, 1958, posted Bulletin No. 48 advertising Carman J. B. Fry, Jr.'s vacated position and assigned claimant to fill the position temporarily while it was under bulletin. Under date of Oc-

vacancy is bulletined as a permanent one. The employes are fully aware of the intent, purpose and application of Rule 14 and that it was never intended to apply, nor has it been applied in filling vacancies of the character here involved.

Rule 14 covers regularly assigned employes who are required to leave their assignment and go to an outlying point to fill a short temporary vacancy of one or a few days duration, but not a permanent vacancy, or one of such duration requiring bulletining under Rule 24. The vacancies contemplated by Rule 14 are for the most part those created as a result of regularly assigned occupant getting sick or wanting to be off for a few days for one reason or another. Or, possibly, because of some emergency it might be desirable to supplement the regularly assigned force for a few days. A reading of Rule 14 clearly indicates that it is designed to cover situations more or less of an emergency nature of limited duration. The vacancy involved was not, obviously, of that character.

At the time claimant went to Taylor on September 23, 1958, he was, as stated in the statement of facts, a furloughed car builder apprentice at San Antonio cut off in force reduction. In other words, at that time he had no job at all. He was called back to service, upgraded to a carman and sent to Taylor to work the permanent vacancy created by F. L. Magourik returning to Palestine. He worked the position until J. B. Fry was assigned thereto September 25, 1958, following which he went to work on the permanent vacancy formerly held by Fry effective September 26 and to which position he was assigned October 3, following which claim for expenses was discontinued.

Under the circumstances here existing why should claimant be entitled to expenses prior to October 3. The employes concede that there is no basis for any claim subsequent thereto. The "permanent" status of the position on which he worked was the same prior to October 3, yet it is contended that claimant is entitled to expenses to and including October 3.

This is not a case where claimant had a position at San Antonio, his home point, and was arbitrarily required by carrier to temporarily leave that position and go to Taylor to fill a position while under bulletin. In this case claimant had no position at San Antonio, he was cut off in force reduction, walking the streets so to speak. Carrier contacted him, agreement reached to upgrade him from an apprentice to a carman and sent to Taylor. He later, on October 3, was assigned following expiration of the bulletin advertising the permanent vacancy he was then filling, and the claim for expenses stopped.

The employes, as shown by their letter dated January 29, 1959, reproduced hereinabove, concede that claimant was filling a "permanent" vacancy. This being so, Rule 24, rather than Rule 14, is here applicable. Therefore, consistent with the findings of your Board in Award 2741, cited above, denying a previous case on this property involving claim for expenses on a permanent position, it is the position of carrier that this claim is likewise without basis and should 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.

A regular carman's position at Taylor, Texas was vacant, and claimant, a furloughed carman apprentice at San Antonio was recalled, upgraded and sent out to Taylor on September 23, 1958, to fill it temporarily while it was under bulletin. Fry, another regularly assigned carman at Taylor, bid it in, and claimant was then used to fill Fry's former position temporarily while it was under bulletin. No bids being received, it was permanently assigned to claimant on October 3rd.

Since meals and lodging were not provided by carrier claimant was entitled to actual expenses while temporarily filling the vacancies at the outlying point from September 23 to October 3, inclusive, under Rule 14(c).

One argument on which the claim was resisted is that the vacancies involved permanent and not temporary positions. But rule 14 relates to employes sent out "to temporarily fill vacancies" not "to fill vacancies in temporary positions. The obvious reason for 14(c) is to compensate the employe for the extra expense caused by his temporary sojourn away from his regular place of residence; that expense is not dependent upon whether the position he temporarily fills is classed as temporary or permanent.

Another objection to the claim is that Rule 14 does not apply to a furloughed employe, since he has no position from which to transfer. But no awards are cited so holding. It is also clear that although he was furloughed, claimant had seniority at San Antonio and definite status and rights there, so that his being sent out to Taylor is reasonably within the meaning of "a temporary transfer" to an outlying point. Furthermore, the rule relates, not only to the "temporary transfer" of employes, but to their being "sent out to temporarily fill vacancies," without reference to the question whether a transfer is involved.

Awards 2741 and 3625, which are cited in opposition to this claim, are not relevant; they relate to periods after bulletined temporary vacancies had been awarded to claimants on their bids in exercise of seniority, but this claim relates only to periods during which the positions were under bulletin and open to bids.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3852

The record in this docket shows and the majority so state that claimant, having been laid off in force reduction, was "a furloughed carman ap-

prentice." The Railway Labor Act defines the term "employe" as including "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 now in effect * * *" A person who had been laid off in force reduction and is not working for his employer is not subject to the employer's continuing authority to supervise and direct the manner of rendition of his service. Therefore, claimant was not, by definition, an "employe" at the time he was "contacted and agreed to go to the outlying point."

The majority erred in applying Rule 14 (c) to the claimant since the rule applies only to "employes" sent out to temporarily fill vacancies at an outlying point.

The majority also erred in holding that Rule 14 (c) gives employes expenses for meals and lodging while away from their "residence." The rule is intended to reimburse an employe for his necessary and actual expenses while away from his regular place of employment, his so-called home point. When claimant was re-employed, his regular place of employment was Taylor and claimant is not entitled to expenses while working at Taylor as claimed.

For these reasons we dissent.

W. B. Jones

H. K. Hagerman

D. H. Hicks

P. R. Humphreys

T. F. Strunck