Award No. 4320
Docket No. 4045
2-MP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood 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

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement, particularly Rule 9, and the Vacation Agreement, particularly Article 12(a), were violated when Carman J. A. Lothringer was denied payment for actual expenses while filling vacation vacancy at New Braunfels, Texas, October 3rd through October 21, 1960, inclusive.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman J. A. Lothringer in the amount of $90.00 for meals and lodging from October 3rd through October 21st, 1960, inclusive, while filling vacation vacancy at New Braunfels, Texas.

EMPLOYES' STATEMENT OF FACTS: When Mr. H. L. Williams, who is an employe of the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, in the capacity of Car Inspector at New Braunfels, Texas, a point approximately 31 miles distance from San Antonio, Texas, started on his annual vacation from October 3rd through October 21, 1960, inclusive, Carman J. A. Lothringer, hereinafter referred to as the claimant, was sent by the Carrier from San Antonio, Texas to New Braunfels, Texas to fill this vacation vacancy. The claimant was paid the regular rate of pay while at New Braunfels, of which there is no dispute; however, the dispute arises from the fact that when the claimant turned in an itemized account of his actual expenses for meals and lodging on Form 1361 while filling this vacation vacancy at New Braunfels from October 3rd through October 21st, 1960, inclusive, the carrier declined to allow him actual expenses, and is the basis of this claim before your Honorable Board.

This matter has been handled up to and including the highest designated officer of the carrier who has declined to adjust the matter.

The Agreement effective June 1, 1960, as subsequently amended, is controlling.

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.

Parties to said dispute were given due notice of hearing thereon.

The facts in the case before us are essentially the same as those in Award No. 4319, with the exception that here we have a furloughed carman who, having made application under Rule 23 for employment, and having been notified of its availability pursuant thereto, and having accepted the offered employment, did then proceed to fill a vacation vacancy between October 3 and 21, 1960, at a point some distance from his home and former headquarters. A claim was filed for his meals and lodging for fifteen days. It was denied and now has been appealed to this Board.

Here, in addition to the contention advanced by Employes in the above mentioned award, to wit, that Carrier violated Rule 9, it is averred that Article 12(a) of the Vacation Agreement also was violated by Carrier in denying said claim.

What was said in Award No. 4319 is also true here and we cannot find in the instant case that there was a violation of Rule 9. Also, we are of the same opinion with reference to Article 12(a) of the Vacation Agreement. We so find in view of the definite provision of Rule 23(a) that the employment to be had thereunder shall be "without expense to the company". In this case also, the application form and the job availability notification form stated that they were under the provisions of Rule 23. Claimant accepted such offer of temporary employment under the terms set forth in Rule 23, not some other rule, and we are constrained, despite carefully considered conflicting authority, to hold that we may not disregard the explicit terms of the employment agreement made by the parties, nor attempt to interpret Article 12(a) of the Vacation Agreement as authority to vary the plain meaning of said contract.

It, therefore, is our opinion here, as in Award No. 4319, that we may not sustain this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1963.

DISSENT OF LABOR MEMBERS TO AWARDS Nos. 4319 and 4320

The statement of the majority that . . . "Claimant was not an 'employe' " is not comprehensible. The second paragraph of the findings states 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." Furthermore, if the claimant was not an employe the Adjustment Board would not have jurisdiction but the third paragraph of the findings states "This Division of the Adjustment Board has jurisdiction over the dispute involved herein."

The correspondence relied on by the majority in reference to "regular assignment" has no bearing on the dispute. Rule 9 of the governing agreement makes no reference to "regular assignment" and the agreement was signed subsequent to the letters containing the words "regular assignment." That it was not intended that they be part of the agreement is further evidenced by the fact that Rule 9 in the consolidated agreement effective June 1, 1960 was carried forward from the previous agreement of September 1, 1949 without any change in the wording and therefore no reference was made to "regular assignment."

It is obvious that the findings and awards are erroneous.

/s/ C. E. Bagwell
/s/ T. E. Losey
/s/ James B. Zink
/s/ E. J. McDermott
/s/ R. E. Stenzinger