

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12636
Docket No. 12354
94-2-91-2-159

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'carrier') violated the provisions of Rule 12 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carmen T. Fisher, J. Roark, F. Lavenia and D. Grissom (hereinafter 'claimants') when the carrier did not allow the claimants compensation for actual expenses incurred for their lunch and dinner when the claimants were sent to outlying point in violation of Rule 12 of the Shop Crafts Agreement.
2. Accordingly, the claimants are entitled to be compensated \$12.03 each for the actual expenses incurred for their lunch and dinner as provided for under the provisions of Rule 12 of the Shop Crafts Agreement."

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.

On December 3, 1988, Claimants were sent to Scottsville, Virginia, to replace a 70 ton roller bearing on open top hopper car CO 141119. The instant claim is \$12.03 each for lunch and dinner expenses incurred. In support of its position that this claim should be sustained, the Organization cites Rules 12 and 10 of the Agreement, which provide as follows:

"Rule 12--Effective June 1, 1923. (a) Employees sent out to temporarily fill vacancies at an outlying point or shop, or sent out on a temporary transfer to an outlying point or shop, will be paid continuous time from time ordered to leave home point to time of reporting at point to which sent, straight time rate for straight time hours, and rate and one-half for overtime hours, whether waiting or traveling. If on arrival at the outlying point, there is an opportunity to go to bed for five hours or more before starting work, time will not be allowed for such hours.

(C) Where meals and lodging are not provided by the company actual necessary expenses will be allowed."
(Emphasis added)

"Rule 10--Effective June 1, 1923. (a) An employee regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station; and for waiting for traveling, rate and one-half for the recognized overtime hours and straight time for the recognized straight time hours at home station.

Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed."

It is axiomatic that the moving party must sustain the burden of proof. See, First Division Award 23889; Second Division Award 12011; Third Division Award 28338. That burden rests on the Organization in the case at bar. Our review of the record, however, indicates that the Organization has not met its evidentiary burden. Rule 12, cited by the Organization, does not apply to the work performed by Claimants on December 3, 1988. Claimants did not "temporarily fill vacancies" nor were they sent on a "temporary transfer" to Scottsville, Virginia. Therefore, there was no violation of the Rule.

By the same token, the Organization's reliance upon Rule 10 is unpersuasive. Rule 10 is predicated upon situations where regularly assigned employees are "called for emergency road work away from" their point of assignment. The Organization in this matter failed to prove that an emergency existed. Absent probative evidence of a contractual violation, this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.