

Award No. 706

Docket No. SG-716

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMAN
OF AMERICA**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: "That Thomas Gilmore and H. E. Huntman, who were sent away from their home station, be paid expenses June 9-24, 1936, and June 9-13, 1936, respectively. All dates inclusive."

EMPLOYEES' STATEMENT OF FACTS: "Thomas Gilmore was, on June 8, 1936, a Signalman, (date as such on the seniority roster is October 29, 1924) but due to force reduction, was temporarily working in the next lower class, namely, that of an Assistant Signalman.

"Gilmore was, through the orderly procedure of force reductions and subsequent displacements, properly assigned to duties in Signal Foreman Woody's gang. The home station of the gang was the camp cars to which they were assigned.

"On June 9, 1936, Gilmore was sent away from the camp cars (his home station) to relieve the regularly assigned Signal Maintainer at Davis, California. See Exhibit 'A'. He relieved the Maintainer at Davis, June 9 to 24th, inclusive. Gilmore then returned to his assigned job in Signal Foreman Woody's gang.

"H. E. Huntman was, on June 8th, 1936, a Signalman (date as such on the seniority roster, May 15, 1925) but due to force reduction was temporarily working in the next lower class, namely, that of an Assistant Signalman.

"Huntman was, through the orderly procedure of force reductions and subsequent displacements, properly assigned to duties in Signal Gang No. 3. The home station of Signal Gang No. 3 was the camp cars to which they were assigned. Signal Foreman J. W. Woody was in charge of this gang.

"On June 9, 1936, Huntman was sent away from the camp cars, his home station, (see Exhibit 'B') to relieve the regularly assigned Signal Maintainer at Suisun, California. He relieved the Suisun Signal Maintainer June 9 to 13, inclusive. Huntman then returned to his assigned job in Signal Gang No. 3."

EMPLOYEES' POSITION: "That Thomas Gilmore and H. E. Huntman were sent away from their home station and are entitled to expenses, June 9-24, 1936, and June 9-13, 1936, respectively, both dates inclusive, and base their contention on the rules of the March 1, 1926, agreement with particular and specific attention called to the following:

'Rule 3.—Assistant Signalman or Assistant Signal Maintainer:

A man in training for the position of signalman or signal maintainer, under the direction of a signalman or signal maintainer.

'The number of assistant signalmen or assistant signal maintainers shall be consistent with the requirements of the service.

such as filling vacancies, and in no instance to the Carrier's knowledge, have such promoted employes been allowed personal expenses. Representatives of the employes have in the past worked under the same conditions, albeit they have neither claimed nor been paid for personal expenses. This is the first claim of its kind that has come to the attention of the general officers of the Carrier, although there have been thousands of instances where employes have been promoted to a higher class.

"8. Obviously the Petitioner is attempting to effect two conditions without adhering to the procedure provided in Section 6 of the amended Railway Labor Act, namely, (a) bring about a change in working conditions, and (b), have the rules of Signalmen's current Agreement interpreted in a way that will produce both a change in working conditions and a change in the rules of the Agreement, either of which is not within the jurisdiction of this Board to Award.

"9. In the absence of any specific provision in the Signalmen's Agreement (there is no such provision), likewise in the absence of any affirmative stipulation in any agreement whereby employes who hold seniority in more than one class and are transferred from a lower to a higher class for the purpose of performing work in said higher class, as a result of vacancies or increased forces, Carriers are not required to pay personal expenses of employes who accept the work and whom the Carrier is required to promote to a higher class because of seniority standing of the employe in said class. By way of illustration—conductors and brakemen generally hold seniority in both classes, the same is true of engineers and firemen; nevertheless when a regularly assigned or an extra unassigned brakeman who is required in the order of his seniority standing to accept work as a conductor, and the same is true of a fireman accepting work as an engineer under similar circumstances, this Carrier, or no other Carrier, so far as our knowledge extends, is required to pay the personal expenses of the employe who is thus promoted to the higher class for the purpose of performing extra work, filling a vacancy or accepting a permanent assignment in the higher class, notwithstanding that in so doing the employe is required to change his headquarters. Therefore, the claim presented by the Petitioner is repugnant to accepted practices and principles which have been in effect dating back to the first of such kind of agreements."

There is in existence an agreement between the parties bearing effective date of March 1, 1926.

OPINION OF BOARD: It is the conclusion of the Division that, on the evidence of record and under a proper interpretation of the controlling rules of the agreement between the parties, the claimants in this dispute should be allowed the expenses claimed.

It is admitted that Claimants Gilmore and Huntman, at the time they were directed by the Carrier to report to Davis and Suisun respectively, were assigned to Signal Gang No. 3 and had their headquarters at Newark, California, in camp cars by virtue of Rule 20 of the agreement which provides that "outfit cars will be the home station as referred to in these rules for employes assigned to such cars."

It is also admitted that the vacancies to which the claimants were respectively assigned were of a temporary character. In each case the regularly assigned employe was absent on leave. It follows that each employe was "sent from home station to fill a temporary vacancy" for more than one day within the meaning of Rule 23. This rule provides that an employe, while filling such a vacancy, "will be paid for the hours worked at the established rate for the position". The rule further provides that an employe filling a temporary vacancy of more than one day shall be paid in accordance with Rule 25.

Rule 25 provides that hourly-rated employees, when sent from their home station to perform work and are held out over night, will be allowed actual expenses "at the point to which sent if meals and lodging are not provided by the Carrier or if camp cars to which employees are assigned are not available."

From what has been said it follows that the claimants in this dispute are entitled to the expenses claimed unless the rules cited and relied upon by the Carrier require a different conclusion.

The Carrier strongly relies upon Rule 42 and Rule 44, among other rules, in support of its position that the claimants are not entitled to the expense allowance claimed herein. Rule 42 provides in part that "promotions shall be based on ability, fitness and seniority". The Carrier urges that the assignments involved were promotions within the meaning of the rule just quoted; and that the employees, having been promoted, are required to accept all of the conditions and incidents of the positions to which they are promoted. In brief, the Carrier urged that the temporary assignment in question changed the home station of the employee. The Carrier also argued that the claimants, having been promoted, fall under the operation of Rule 44 which provides in part that "employees accepting positions in the exercise of their seniority rights will do so without causing expense to the railroad".

The Division cannot accept the contention of the Carrier that the claimants in question were promoted within the meaning of Rule 42 and that Rule 44 controls with respect to the incidental expenses. It is to be remembered that each of the claimants, although at the time of the assignments in question working in a lower classification as a result of force reductions, held uninterrupted seniority rights as a signal maintainer for a period of ten years or more. It is also to be remembered that each of the assignments in question was a temporary assignment of relatively brief duration. Each claimant, unless expenses are allowed, will have sustained a net loss in earnings as a result of having filled the temporary assignment. Assuming that these temporary assignments were promotions, the record clearly indicates that neither claimant was given the opportunity to decline the promotion as he clearly is entitled to do under Rule 37 which provides that "employees declining promotions shall not lose their seniority".

In the circumstances of this dispute, the Division is of the opinion that the employees in question were not promoted within the meaning of the Rule 42; that the expenses claimed were not incurred in connection with the exercise of seniority within the meaning of Rule 44; and that, accordingly, they are entitled to the expense allowance within the meaning of Rule 25.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That each of the claimants is entitled to the expense allowance claimed.

AWARD

The claim of each employee is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 27th day of July, 1938.