

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Item in Bulletin No. 20, Oklahoma Division, dated June 20, 1944, reading:

"B&B Gang No. 3 1—1st rate 85c per 8 a.m. 12N 1 p.m. 5 p.m.
(Note) Carpenter hour No Sundays or holidays

"NOTE: Headquarters for carpenters job advertised on Gang 3 is El Reno, no outfit cars furnished, carpenter assigned will be required to have full sets of tools per Rule 44 of Maintenance of Way Agreement."

was erroneous in that it established a different headquarters for the one carpenter whose position was thus advertised other than the headquarters of the B&B gang to which he was supposed to be assigned and at which point he would work without supervision of his foreman;

(2) That Bulletin No. 20 be reissued and corrected to provide that all employees in B&B Gang No. 3 will have one and the same headquarters.

EMPLOYEES' STATEMENT OF FACTS: Bulletin No. 20 issued June 20, 1944, advertising vacancy of one carpenter in bridge and building gang No. 1 and one carpenter in bridge and building gang No. 3, reads:

"MAINTENANCE OF WAY BULLETIN No. 20—B&B Forces

El Reno—June 20, 1944
File—26

ALL B&B FOREMEN

ALL B&B CARPENTERS

Advertisements

Location	Position	Rate of Pay	Assigned Hours
B&B Gang No. 1 Oklahoma Division	1—1st rate carpenter	85c per hour	8 a.m. 12N 1 p.m. 5 p.m. No Sundays or holidays
B&B Gang No. 3 (note)	1—1st rate carpenter	85c per hour	8 a.m. 12N 1 p.m. 5 p.m. No Sundays or holidays

POSITION OF CARRIER: The employees' claim is that by showing on Bulletin No. 20 of June 20, 1944, Location as "B&B gang No. 3" and with headquarters at "El Reno," it established two headquarters for B&B gang No. 3, i.e., Oklahoma Division and El Reno, Oklahoma.

In order to satisfactorily dispose of their complaint instructions were issued to the Superintendent to abolish this one position which was assigned to Mr. Bell under assignment Bulletin No. 22 showing Location "B&B gang #3" headquarters "El Reno," and bulletin new position with headquarters at El Reno, Oklahoma.

The bulletining of this new position is in accordance with Rule 4(a), reading:

"Rule 4. BULLETINING POSITIONS. (a) All new positions or vacancies, except section men and laborers, will be promptly bulletined on bulletin boards accessible to all employees affected for a period of ten (10) days. Bulletin will show location, descriptive title, and rate of pay."

By now showing on the bulletin for this position, location only at "El Reno," etc., and deleting reference to B&B gang No. 3, the provisions of the above rule are fully complied with and the successful applicant will be compensated, if and when required to travel away from El Reno, in accordance with Rule 34 (c) of the Maintenance of Way Agreement, reading:

"Rule 34. (c) TRAVEL AND WAITING TIME. Employees, except as provided by Sections (a) and (b), who are required by the direction of the management to leave their home station will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at the pro rata rate.

If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed.

Employees will not be allowed time while traveling in the exercise of seniority rights, or between their homes and designated assembling points, or for other personal reasons."

The location of headquarters or location for this position will, therefore, be "El Reno, Oklahoma" and this is strictly in accordance with Rule 4 (a) quoted above.

OPINION OF BOARD: The Organization contends that the position here involved was erroneously bulletined in that it established a different headquarters than that of the B&B Gang to which the occupant of the position was assigned. The record shows that Bulletin No. 20 advertised the position as to location as "B&B Gang No. 3. Note: Headquarters for carpenters job advertised on Gang 3 is El Reno, . . ." B&B Gang No. 3 is assigned to outfit cars for work on any part of the Oklahoma Division. The contention was made that the assigning of the Carpenter's position in question to El Reno was the equivalent of assigning two headquarters to B&B Gang No. 3. The Carrier, in an attempt to satisfy the complaint made by the Organization, abolished the position and rebulletined it showing the location as "El Reno, Okla.," no reference being made to Gang No. 3.

It is the contention of the Organization that under the Maintenance of Way Agreement, a regular carpenter assigned to work 8 hours per day must be assigned to work under a B&B foreman at the headquarters of the foreman. The Organization further contends that the only exception to the foregoing is contained in Rule 34 (b), which reads:

"Employees temporarily or permanently assigned to duties requiring variable hours, working on or traveling over an assigned territory and away from and out of reach of their regular boarding and lodging places (or outfit cars), will be paid ten (10) hours' time at pro rata rate or straight time rate for eight (8) hours' service and regular overtime rate for all service rendered in excess of eight (8) hours. Employees in this class of service will furnish meals and lodging at their own expense."

The Carrier argues that the position was bulletined in accordance with Rule 4, which reads:

"All new positions or vacancies, except section men and laborers, will be promptly bulletined on bulletin boards accessible to all employees affected for a period of ten (10) days. Bulletin will show location, descriptive title, and rate of pay."

The Carrier then contends that an employee assigned to a properly bulletined position under Rule 4, when required to travel away from his headquarters, will be compensated in accordance with Rule 34 (c). We desire to point out that by an interpretation contained in the Agreement, Rule 34 (c) is intended to cover employees called out in an emergency to perform work on or off their regular assigned territory. We do not think it was contemplated that the rule should be applied to a regular assignment.

While it can be said that the position as rebulletined complied with the literal requirements of the rule, it does not furnish the answer to the question whether the location as bulletined was a proper one. This, we think is the crux of the present dispute.

While there is no specific provision in the Agreement providing that a B&B employee must be assigned to work under the supervision of a foreman, a consideration of the Agreement as a whole leads us to that conclusion, except where the contrary is specifically provided. In classifying employees under the Agreement, foremen and assistant foremen are provided for with seniority as such. The Agreement clearly contemplates that B&B work is to be done under a foreman's supervision, an interpretation that seems to be consistent with the manner in which such work is generally performed on all railroads. We think, therefore, that an employee is required to be assigned under the supervision of a foreman and with the same headquarters as the foreman except as the Agreement otherwise permits.

The Carpenter's position here involved must be assigned to a gang with the same headquarters as the gang, or, if his work is such as to require it, he should be assigned under the provisions of Rule 34 (b) and be compensated in the manner therein provided. The bulletin advertising the position fails to meet the requirements of either eventuality.

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 the Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1946.