

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Adolph E. Wenke, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**WABASH RAILROAD COMPANY**

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

(1) The Carrier violated the provisions of the current working agreement when it did not allow Section Foreman G. E. Jackson eight (8) hours pay for time consumed on April 2, 1946, in carrying out instructions of the Carrier;

(2) The Carrier violated the provisions of the current working agreement when it did not allow Section Foreman G. E. Jackson seventy-five (75) cents for expenses incurred in carrying out instructions of the Carrier on April 2, 1946;

(3) Section Foreman G. E. Jackson be allowed eight (8) hours pay at the section foreman's rate for time consumed on April 2, 1946, and be reimbursed in the amount of seventy-five (75) cents for expenses incurred on April 2, 1946, in carrying out instructions of the Carrier.

**EMPLOYEES' STATEMENT OF FACTS:** G. E. Jackson is employed as a section foreman at Wentzville, Missouri. Under date of March 26, 1946, he was instructed by Division Engineer G. F. Rothwell, to report at the Wabash Hospital, Moberly, Missouri, for a physical examination on Tuesday, April 2, 1946. In accordance with instructions, Mr. Jackson did report for examination, and in doing so, was required to incur expenses amounting to seventy-five cents (75¢). Mr. Jackson was not allowed pay for April 2, 1946, nor was he reimbursed for expenses incurred in carrying out instructions of Division Engineer Rothwell on April 2, 1946.

Agreement dated June 1, 1940, is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** G. E. Jackson is employed as a section foreman at Wentzville, Missouri, and as such, is paid a monthly salary in accordance with the provisions of Rule 27 of the effective agreement. Under date of March 26, 1946, he was instructed by Division Engineer Rothwell to report at the Wabash Hospital, Moberly, Missouri, on April 2, 1946, for the purpose of submitting to a physical examination. In support of this statement, we are quoting below copy of letter to Section Foreman Jackson, from Division Engineer Rothwell, under date of March 26, 1946:

whatsoever on the alleged claim which has been presented in favor of Section Foreman Jackson.

As a matter of fact, there is no rule in the Agreement covering employees represented by the Brotherhood of Maintenance of Way Employees which provides for, or contemplates that, such employees will be compensated for time lost account of being required to undergo a physical examination or re-examination; and that fact has heretofore been recognized by the representatives of the employees.

Prior to the physical re-examination of Section Foreman Jackson, which was completed on April 29, 1946, he did not wear glasses in the performance of his work as Section Foreman; but that examination showed that his vision was impaired to an extent whereby it was necessary for him to wear glasses in order to bring his vision up to the standard required of a Section Foreman and also to enable him to properly perform his duties as such; therefore, as shown by the Carrier's Statement of Facts, the Division Engineer was fully justified in requiring Section Foreman Jackson to undergo a physical re-examination.

When consideration is given to that fact, and the further fact that the alleged claim referred to herein is not supported by the rules of the Agreement effective June 1, 1940, it is obvious that the contention of the Committee should be dismissed and the claim denied.

Exhibits not reproduced.

**OPINION OF BOARD:** The System Committee claims the Carrier violated their agreement when it failed to pay Section Foreman G. E. Jackson for eight hours of time for April 2, 1946 and, in addition thereto, the sum of seventy-five cents, being expenses incurred for his noon-day lunch. It asks that Jackson's claim for these two items be allowed.

The record establishes that Claimant was employed by the Carrier as a Section Foreman and assigned to Section 12, with headquarters at Wentzville, Mo. Section 12 is on the main line of the Carrier between Kansas City and St. Louis and includes 8.25 miles of what is referred to as "high speed" main track. This Section is included in the territory of the Carrier which is under the supervision of Track Supervisor, Roy McLoughlin. For several months prior to April 2, 1946 McLoughlin had become aware of the fact that the main track in Section 12 was not being properly maintained. On numerous occasions he called this fact to the attention of the Claimant, but without any satisfactory results. McLoughlin then came to the conclusion that the condition was possibly due to Claimant's physical condition and requested the Division Engineer to instruct Claimant to report to the Wabash Hospital at Moberly, Mo., for a physical examination. This was done, and on March 26, 1946, Claimant was so instructed by the Division Engineer, Rothwell. As a consequence Claimant reported to the hospital on April 2, 1946 and was examined. It was on this trip that Claimant incurred the 75¢ expense item in buying his noon-day lunch. The examination disclosed that the Claimant had defective eye-sight. This condition was corrected by the use of proper glasses. Claimant returned to his position and is doing his work satisfactorily.

Rule 27 of the parties' agreement provides:

**"Supervisory Employees:** Employees whose responsibilities or supervisory duties require service in excess of the working hours or days assigned for the general force will be compensated at a monthly rate to cover all service rendered, except that when such employees are required to perform work on Sundays and holidays, or in excess of eight (8) hours, which is not exclusively a part of their responsibilities or supervisory duties, such work will be paid for on the basis provided in these rules, in addition to the monthly rate. Section foremen required to walk or patrol track on Sundays or holidays will be paid therefor on the basis provided in these rules, in addition to the monthly rate. This rule does not apply to

Bridge and Building foremen, Painter foremen and Water Service foremen."

Rule 44 of the parties' agreement provides:

"**Expenses.** Employees will be reimbursed for cost of meals and lodgings incurred while away from outfits or headquarters by direction of the management, whether off or on their assigned territory. This rule not to apply to midday lunch customarily carried by employees, nor to employees traveling in exercise of their seniority rights."

In Award 3226, under comparable rules, we correctly said:

"\* \* \* an agreement fixing minimum rates of pay contemplates payment only for days worked and days the employee was available for work".

Here, Claimant was available for work on April 2, 1946 and would have worked except for Carrier's instructions for him to report to the hospital at Moberly for a physical examination. Carrier's contention that this examination was solely for the benefit of Claimant is without merit. While it is true that Claimant undoubtedly received a benefit therefrom, that was not the purpose for which the Carrier had it made. Here was an experienced and valuable employee of the Carrier apparently becoming incompetent because of what the Carrier surmised was some physical disability. To see if this could not be corrected and overcome, the Carrier required the examination. That the examination was of real service to the Carrier there can be no doubt for this trained and valuable employee was thereby returned to duty with his ability competently to do his work fully restored. Surely, no benefit service could come to the Carrier from one day's service. And, of course, the expense of the Claimant incurred while on this trip, by reason of the instructions of the Carrier, is properly allowable under Rule 44.

The fact that the Claimant would be required to have another physical examination in December of 1946, by reason of the parties' Memorandum Agreement of May 20, 1940, has no relation to this claim whatsoever.

**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 Carrier violated the agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1948.