

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**ATLANTA AND WEST POINT RAILROAD—
THE WESTERN RAILWAY OF ALABAMA**

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

(1) That Apprentice Foreman C. O. Freeman be reimbursed in the amount of \$30.15 for expenses incurred while working away from his headquarters by direction of the Management during the period January 17 to 29, 1947, both of dates inclusive;

(2) That Apprentice Foreman W. E. Hopkins be reimbursed in the amount of \$106.00 for expenses incurred while working away from his headquarters by direction of the Management during the period January 2, 1947, to April 5, 1947, both dates inclusive.

EMPLOYEES' STATEMENT OF FACTS: During the period January 17 to 29, 1947, C. O. Freeman was a regularly assigned Apprentice Foreman with headquarters at Notasulga, Alabama. By direction of his supervisor, C. A. Freeman was assigned to fill a temporary vacancy of Foreman at Selma, Alabama from January 19 to 27, 1947 inclusive. While C. O. Freeman was away from his headquarters at Notasulga, Alabama, he incurred expenses for meals and lodging while at Selma in the amount of \$30.15. He submitted these expenses to the Carrier, but the Carrier has failed to reimburse C. O. Freeman for these expenses.

During the period January 2 to April 5, 1947, W. E. Hopkins was a regularly assigned Apprentice Foreman with headquarters at College Park, Georgia. By direction of his supervisor, W. E. Hopkins was assigned to fill temporary vacancies of Foreman at the following points:

Palmetto, Georgia—January 2 to January 25, 1947 inc.
Fairburn, Georgia—February 17 to February 21, 1947 inc.
Newman, Georgia—March 12 to March 15, 1947 Inc.
Louise, Georgia—March 24 to March 29, 1947 inc.
Westpoint, Georgia—April 2 to April 5, 1947 inc.

While W. E. Hopkins was away from his headquarters at College Park, Georgia, he incurred expenses for meal, lodging, and other necessary expenses in the amount of \$106.00. He submitted these expenses to the Carrier, but the Carrier has failed to reimburse W. E. Hopkins for these expenses.

Agreement dated December 16, 1944, is by reference made a part of this Statement of Facts.

We believe we have conclusively shown that Rule 17 is not applicable and that the case is without merit. Therefore, we respectfully request that it be declined.

OPINION OF BOARD: This controversy arises out of the interpretation and application of Rule 17 (a) of the current applicable Agreement between the parties. That Rule provides:

"Rule 17 (a). Employees will be reimbursed for necessary expenses incurred while away from their regular outfits or regular headquarters by direction of the Management, whether off or on their assigned territory. This rule not to apply to employees traveling in exercise of their seniority rights."

The Claimants here are Apprentice Foremen who incurred expenses while away from their regular headquarters by direction of the management to fill temporary vacancies in Foreman positions. A statement of their expenses was furnished to the Carrier but payment was refused.

It is admitted that Apprentice Foremen are employees covered by the Agreement. No question is raised as to the submitted list of expenses not being correct.

In its original submission the Carrier states:

"It was our understanding at that time (Dec. 16, 1944, when the Rule was negotiated) that Rule 17 would not be considered as applying to Apprentice Foremen performing work as Relief Foremen."

The Carrier points out nothing which led it to such an understanding at the time the Rule was negotiated.

While it is necessary to have a meeting of the minds of the parties to have a valid contract, the provisions of the contract are reduced to writing to witness what the parties then intended. If there be no ambiguity in their written contract, neither party will be heard to say later that such a contract was not intended.

We fail to find in this Rule any ambiguity which would justify either party in now saying that at the time this Rule was negotiated they understood that the first sentence of this Rule did not cover all employees covered by the Scope Rule of the Agreement.

The one express exception as to employees travelling in exercise of their seniority rights negatives any implied exceptions.

We find further evidence that the parties when negotiating this rule understood and intended that it should cover Apprentice Foremen in the fact that in the 1942 Agreement between these parties the Rule covering expenses away from home was followed by a note which provided:

"This rule does not apply to cases where Foremen are relieved by Relief Foremen."

The parties agree that these Apprentice Foremen Claimants during the time for which they are claiming expenses were "Relief Foremen," temporarily filling Foremen positions. That preceding Rule also provided that the expense there provided for was for "employees," the same class provided for in the present rule.

It is difficult to understand why the Carrier should have thought the written expressed exception as to Apprentice Foremen necessary to this rule in the 1942 Agreement but unnecessary to this Rule in the 1944 Agreement. If the description of the class covered by the present Rule were ambiguous the fact that the expressed exception of Apprentice Foremen to the 1942 Agreement was omitted from this Rule in the 1944 Agreement would necessarily be construed as showing an intention of the parties to change the present Rule to include Apprentice Foremen.

The Carrier also insists that the General Chairman of the Organization understood that this Rule did not cover Apprentice Foremen and offer as proof his letter of August 21, 1946, in which he said:

"While in conference with you Monday, August 19, 1946, the Committee and I discussed the matter of letting Rule No. 17 in our current agreements apply to apprentice foremen while away from home doing relief work * * * we feel that his expenses should be paid while out doing relief work. We ask that this be made effective as of August 1, 1946, * * *."

The Organization contends that prior to this letter the Carrier had been allowing expenses in such cases to some of these Relief Foremen and denying it to others; that the conference and letter were for the purpose of clearing up a bad situation and securing the application of the rule in all cases; that as a further attempt to secure adjustment of the entire matter the allowance of a flat daily rate had been discussed in lieu of "necessary expenses" which had been differently interpreted by the Carrier and some of the employees.

In answer to the above letter to the General Chairman the Carrier replied:

"We do not believe that Article 17 of the current agreement is applicable to this question. However, we are thoroughly agreeable, effective August 1, 1946, to pay actual reasonable expenses of apprentice foremen while away from station doing relief work, with the understanding that the arrangement may be discontinued any time we see fit to do so."

To this the General Chairman by letter replied:

"We take the position that Rule 17 does apply to apprentice foremen while away from their home station * * * and we are not agreeable to your proposal that you may discontinue the application of Rule 17 to apprentice foremen at any time you see fit."

The Carrier, effective August 1, 1946, did start paying such expenses and continued to do so through December 31, 1946, when it discontinued such allowance.

Since June 24, 1947, the Carrier has been allowing \$2.00 per day in lieu of such expenses, but without any agreement therefor with the Organization.

We find nothing in the above correspondence or in the conduct of the parties to change or amend the plain provisions of Rule 17. The claims must, therefore, be sustained.

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

The Carrier violated the Agreement as claimed.

AWARD

Claims (1) and (2) are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1948.