

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) That the Carrier violated the agreement by not reimbursing Carpenter M. M. Black for his necessary expenses for meals and lodging incurred while he was assigned to operate the drawbridge at Palatka during the period November 9, 1947 to January 1, 1948, inclusive;

(2) That Claimant M. M. Black be now paid the full amount of the expenses incurred by him as specified in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: M. M. Black is a regularly assigned B&B Carpenter, First Class, Rank Number 6, in the B&M Sub-Department.

Prior to November 9, 1947, Carpenter Black was so assigned. On November 9, 1947, by direction of the Carrier, Carpenter Black was sent from his regular headquarters to fill a vacancy in the position of Drawbridge Tender at Palatka Drawbridge. This temporary vacancy was caused by the regular Drawbridge Tender, W. W. Smith, having taken seriously ill.

Carpenter Black was required to remain at Palatka, away from his regular headquarters, from November 9, 1947 to January 1, 1948, inclusive. Black's assignment at Palatka was on a seven-day basis.

On or about January 1, 1948, the regularly assigned Drawbridge Tender, W. W. Smith, returned to his position at Palatka. Black returned to his regular gang and to his regular assignment as a Carpenter.

During the period Black was assigned to the duties of a Bridge Tender at Palatka, he was paid his regular Carpenter's rate of pay. No allowance was made by the Carrier to cover expenses for meals and lodging incurred by Carpenter Black while he was so assigned.

There is a Carrier-owned cottage at Palatka Drawbridge for the exclusive use of the Bridge Tender. This cottage was occupied by the family of Bridge Tender W. W. Smith during the time Black was temporarily assigned to cover the Bridge Tender's position.

During this period November 9, 1947 to January 1, 1948, Carpenter Black incurred necessary expenses for meals and lodging to the amount of \$148.15. Request was made by the Employees' representative that Carpenter Black

Employees' silence for four months after the Chief Operating Officer confirmed the settlement in his letter of April 21, 1948. If the Employees are to be permitted to now withdraw from that agreement, then no claims may ever be deemed as having been settled locally on this or any other Railway and the efforts to dispose of them short of the National Railroad Adjustment Board are wasted.

(c) If, notwithstanding the position of the Carrier as stated in Section I above, the Third Division should consider the substance of this claim, then all parts of the claim should be denied for lack of merit.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim made by the System Committee of the Brotherhood in behalf of carpenter M. M. Black for necessary expenses had for meals and lodging while assigned to operate the drawbridge at Palatka during the period from November 9, 1947 to January 1, 1948, inclusive.

The record discloses that M. M. Black was, prior to November 9, 1947, regularly assigned as a carpenter in carpenter gang No. 2 working at Lake Worth; that on November 7, 1947 the regularly assigned drawbridge tender at the Palatka drawbridge became ill and, as a result, a temporary vacancy occurred on that position; that no other qualified drawbridge tender was available except Black, he having seniority as such; that Black was assigned thereto on November 9, 1947 and remained thereon until the position was filled on January 1, 1948 pursuant to bulletin dated December 15, 1947; that Black then returned to his position on Carpenter Gang No. 2; and that during the period while working on the position as drawbridge tender he incurred the expenses for which claim is here made.

Carrier contends that Rule 12 (d) of the parties' effective Agreement was not complied with and, because thereof, the claim is not here for our consideration.

Rule 12 (d) is as follows:

"Decisions by the Chief Operating Officer designated by the Railway to handle such disputes shall be made in writing, as promptly as possible, and shall be final and binding unless within ninety (90) calendar days after the date of written notice of such decision the Chief Operating Officer is notified in writing that his decision is not accepted. In the event of such notification all grievances or claims involved in such decisions shall be barred unless referred to the appropriate tribunal provided by law within one (1) year from the date of the decision of the Chief Operating Officer."

It is Carrier's thought that the Brotherhood's failure to notify its Chief Operating Officer, until August 21, 1948, that his decision was not acceptable, after he had notified the Brotherhood's General Chairman by letter dated April 21, 1948 of his decision based on his understanding of the settlement reached in conference on April 16, 1948, was in violation of the 90-day provision contained in Rule 12 (d) and prevents the Brotherhood from taking this appeal. It is true that the General Chairman did not write and inform the Chief Operating Officer of the Carrier until August 21, 1948, more than 90 days after April 21, 1948, that they did not accept his decision and of their intention to appeal therefrom. However, on May 2, 1948 the Claimant did so and returned the check referred to in the Chief Operating Officer's letter of April 21, 1948, which check was based on his understanding of the settlement that had been agreed to. We think this letter of Claimant sufficient under Rule 12 (d) to inform the Carrier that the decision of its Chief Operating Officer was not acceptable and, being within the time as provided by Rule 12 (d), the appeal was properly taken and the claim is therefore before us.

On the merits the following Rules of the parties' effective Agreement are applicable:

Rule 33—Allowances for Expenses

"Employees will be reimbursed for necessary expenses for meals and lodging incurred while away from their regular outfits or regular headquarters by direction of the Management. This rule will not apply to employees traveling in exercise of their seniority rights or to employees doing relief work under the provisions of Rule 28 (c)."

Rule 28 (a)—Bulletining Positions

"Except as provided in the third sentence of this paragraph and in paragraph (b) of this rule, new positions or vacancies that are expected to exist thirty (30) or more calendar days will be bulletined as permanent within ten (10) calendar days after the date the positions are created or vacancies occur. When it is known in advance that such positions will be created or that such vacancies will occur they will be bulletined in advance of the effective date. Vacancies caused by personal illness, injury or leave of absence of the incumbent of the position (except those leaves of absence referred to in the first sentence of Rule 27 (c) which will be bulletined as permanent vacancies) will be considered as temporary and will be bulletined as such as soon as it is determined that they will exist for thirty (30) calendar days or more. If such vacancies later develop to be permanent they will be rebulletined as such. The bulletining of a position or vacancy as 'permanent' under this rule does not imply or guarantee a definite period of duration."

Rule 28 (c), in part, as follows:

"Except for Crossing Watchmen, when filling temporary positions or if vacancies of four (4) to thirty (30) calendar days are filled, the supervisor of the district where the vacancy occurs will use the senior employe on his district, who has seniority in the rank in which the vacancy develops, who has made application to his supervisor for such relief work not less than ten (10) calendar days before the vacancy occurs, and who is not working in the rank in which the vacancy develops. In the event no employe has made application for relief work the vacancy will be filled by using the qualified employe most conveniently available."

In view of the situation that existed at the time the temporary vacancy occurred the Carrier had the right, under the quoted provision of Rule 28 (c), particularly the last sentence thereof, to assign Claimant to the temporary vacancy of drawbridge tender at Palatka. Situations within the provisions of Rule 28 (c) being exempt from the provisions of Rule 32, Carrier was not responsible for necessary expenses of Claimant while properly assigned thereunder.

However, under the quoted part of Rule 28 (c) such right existed for only 30 days and the position should have been bulletined as a temporary vacancy as required under Rule 28 (a). Consequently, after the first thirty days, the assignment was no longer exempt from the provisions of Rule 33.

The record discloses that the Carrier furnished a house for the occupant of the bridge tender's position at Palatka and, at the time, it was being occupied by the family of the regularly assigned occupant of that position. It has been a recognized practice, understood and agreed to by the Brotherhood, that a relief man is entitled to quarters in a house when provided by the Carrier for the occupant of a position and is not entitled to compensation for lodging, regardless of whether or not he exercises that right.

In view of our holdings herein we think the claim should be sustained but only for the expenses had for meals after the first thirty days of the

period Claimant was assigned to fill the temporary vacancy of drawbridge tender at Palatka.

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier violated the rules of the parties' Agreement.

AWARD

Claim sustained but only for the necessary expenses had for meals, after the first thirty days, while Claimant was filling the temporary vacancy of drawbridge tender at Palatka.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1949.