Award No. 6170
Docket No. MW-6058

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-ILLINOIS RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when it assigned Section Laborer W. M. Brumley to leave his home station at Sparta, Illinois, to relieve the Section Foreman at Salem, Illinois and refused to compensate him for necessary and actual expenses incurred;

(2) That Section Laborer W. M. Brumley, be paid forty-three dollars and ninety cents ($43.90) as reimbursement for the expenses he incurred while fulfilling the assignment referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. W. M. Brumley was regularly employed as a Section Laborer on Section No. 6 at Sparta, Illinois during January, 1951.

On January 31, 1951, he left his home station at Sparta by direction of the Carrier and went to Salem, Illinois to perform temporary service on Section No. 1 during the vacation period of regular foreman W. H. Dooley.

Upon the completion of the temporary service as foreman on Section No. 1 at Salem at the close of the work day February 14, 1951, Mr. Brumley returned to his regular position as a section laborer on Section No. 6 at Sparta, Illinois.

Mr. Brumley incurred meal and lodging expenses in the amount of $43.90, which he submitted to the Carrier for reimbursement in accordance with the provisions of Rules 25 and 26 of the effective agreement, which read as follows:

"Temporary or Emergency Travel Service:

Rule 25. Employes in temporary or emergency service, except as provided in Rule 21, 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

for granting a privilege. It is the Carrier representative who must notify an employe of work to which he is entitled under the agreement. We cannot conceive of how this can be held to be requiring an employe to move by direction of the management. As we have already pointed out, if such were the case, there would never be any moves that were not by direction of management and the term as it appears in the rule would be a surplusage of words without meaning. Under that reasoning it could be held that assignment of an employe to a bulletined position would be requiring him to move by direction of the management and we think it would thus lead to an absurd conclusion.

The implied difference seems to be that when a position is bulletined the employe has the privilege of choice—that he is not required to move unless he expresses a desire to do so. We think the best that can be said is that the difference is only implied—it does not exist in fact. As far as filling temporary vacancies (of which the employes are notified by letter, telegram or verbal communication rather than by bulletin) is concerned, the employes—all of them—have already long since expressed themselves, through their representatives. Their wishes were recorded in the written rule which says that they—all of them who may be involved in a situation such as here in question—must be granted the privilege of moving to the vacancies. This expressed wish has been set down as an obligation upon the Carrier. If it is not an expression of choice we do not know what else it could be called; certainly the move is not a matter of choice for the Carrier. If the Carrier has no choice—cannot do otherwise than was done in this case—how can it be by direction of the management? We are sure that if the Carrier had not notified this claimant of the work in question, but had used a section laborer at Salem to perform it, we would have been confronted with a claim under Rule 3 (f), and such a claim could not have been based upon anything except the right of the claimant to take the work in the exercise of his seniority rights. In short, we think it is impossible for an employe to obtain work by reason of seniority—work that he could get in no other way—without an exercise of seniority rights.

It is the position of the Carrier that this Maintenance of Way Agreement does not contain any provision requiring the payment of the expenses claimed. The rules cited in support of the claim have been in effect for many years without any claims of this kind having been made in similar circumstances. We do not believe the Employes have submitted facts necessary to require or permit the claim being paid.

(Exhibits not reproduced).

OPINION OF BOARD: This is a claim for expenses incurred by Claimant Section Laborer W. M. Brumley while serving as a relief Section Foreman at Salem, Illinois, while the regularly assigned Section Foreman of the position, W. H. Dooley, was on vacation. The claim covers actual expenses for meals and lodgings while so serving, which was from February 1 to 14, 1951, both dates inclusive.

Claimant was working as a regular section laborer on Section No. 6 at Sparta, Illinois, but had seniority as a Section Foreman as of June 1, 1946. When W. H. Dooley, the regular Section Foreman on Section No. 1 at Salem, Illinois, went on a vacation commencing February 1, 1951, Carrier used claimant on his position. He served in that capacity from February 1 to 14, 1951, both dates inclusive. Carrier's use of claimant was in accordance with Rule 3 (f) of the parties' Agreement which, as far as here material, provides: "* * * in filling temporary vacancies, senior laid off employes in their respective rank, seniority group and seniority district, will be given preference in employment."

The System Committee bases the claim on Rules 25 and 26 of the parties' Agreement. Carrier contends neither rule is applicable to the situation presented. We agree with Carrier that Rule 26 has no application because

it applies to "emergency cases" which is not true of the situation here presented. However, we do not agree with Carrier's contention that Rule 25 has no application.

Rule 25 applies to employes in temporary service, which is the situation here, and provides: "Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed." This right is based on the condition that employes, while so serving, must have been required to leave their home station by direction of management.

It is Carrier's thought that since it used claimant in accordance with Rule 3 (f) that he was not required to perform the relief work at Salem by direction of the management.

This Division has often held that when Carrier acts to fulfill the seniority requirements of its employes in filling temporary vacancies, such as here, it is not an exercise of seniority by the employe but the performance of Carrier's duty and done at its direction. See Awards 769, 3426, 3495 and 5293.

As stated in Award 3495, in allowing a claim based on a comparable rule: "In filling such a vacancy it was the duty of the Carrier to fill it in accordance with seniority rules." Such being true, it was done at Carrier's direction.

In view of the foregoing we find the claim to be meritorious.

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 Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.