

Award No. 6189
Docket No. MW-6161

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the agreement when it required relief foreman L. L. Nichols to fill the position of foreman at Parsons, Kansas, and assigned a Section Laborer to fill the position of foreman at Mr. Nichols' home station beginning on July 2, 1951:

(2) That the Carrier reimburse relief foreman L. L. Nichols for expenses incurred while filling a position of foreman at Parsons, Kansas, during the time an employee holding no foreman's seniority was permitted to fill the position of relief foreman at Mr. Nichols' home station.

EMPLOYES' STATEMENT OF FACTS: There are three relief section foremen assigned to work under the jurisdiction of Roadmaster J. Couch. These individuals are listed below in their seniority order:

1. A. C. Rodriguez
2. O. O. Couch
3. L. L. Nichols

Relief Foremen are customarily assigned to relieve other foremen while on vacation, sick leave or any authorized leave of absence, and are assigned to certain vacancies in accordance with Rule 5 of Article 4, which reads as follows:

**"ARTICLE 4. PROMOTIONS AND BULLETINS,
TRACK DEPARTMENT**

Rule 5. Vacancies, or new positions, that are definitely known to be of twenty (20) days or less duration, will not be bulletined. The senior unassigned foreman or senior relief foreman will be notified at last available address of such vacancy, and shall immediately inform District Engineer of acceptance or rejection. Until such

Without prejudice to the Carrier's position that the Agreement was not violated, as alleged by Petitioner, and that the handling was in accordance with the Agreement and claim for expenses of meals and lodgings is therefore without merit and agreement basis, no itemized statement of alleged expenses has been furnished the Carrier, and in the opinion of the Carrier the claim of \$70.00 for ten days, or \$7.00 per day, is excessive and unwarranted for a Section Foreman at Parsons.

As the facts and evidence definitely and conclusively show the agreement was not violated as alleged by the Petitioner, and no rule in the agreement supports claim for personal expenses as claimed, the Board is requested to deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The System Committee of the Brotherhood claims Carrier violated its Agreement with them when, during the period of July 2 to 16, 1951, it required Relief Section Foreman L. L. Nichols to fill the position of Section Foreman at Section 201, Parsons, Kansas, while, during the same period, it permitted Section Laborer S. A. Shewbart to fill the position of Section Foreman at Section 215, Wagoner, Oklahoma, Nichols' home station. It asks, because thereof, that Carrier reimburse Nichols for the actual and necessary expenses he incurred for meals and lodging while filling the assignment at Parsons. This expense amounted to \$70.00, being \$50.00 for meals and \$20.00 for lodging.

In accordance with Article 4, Rule 1, of the parties' effective Agreement, Carrier had available three Relief Section Foremen for use on the territory under the jurisdiction of Roadmaster J. L. Couch. They were, in the order of their seniority, A. C. Rodriguez, O. O. Couch and L. L. Nichols. Beginning July 2, 1951, there were four temporary vacancies of Section Foreman positions on this territory. They were all of less than twenty days' duration and accordingly not to be bulletined. See Article 4, Rule 5 of the parties' effective Agreement. The four vacancies were Sections 214 and 215 at Wagoner, Oklahoma, Section 201 at Parsons, Kansas, and Section 167 at Galena, Kansas. Under the provisions of Article 4, Rule 5, the senior unassigned available relief foreman is required to be notified of vacancies of twenty days' duration, or less, which his seniority may entitle him to for the purpose of acceptance or rejection.

Carrier assigned Rodriguez to Section 214 at Wagoner and Couch to Section 167 at Galena. This left Section 201 at Parsons and Section 215 at Wagoner open. Without advising Claimant that both these vacancies were open and available to him, Carrier on June 30, 1951, notified him to "arrange to relieve E. C. Garton Sec. 201 Parsons Monday 2nd." This left Claimant with no choice. It required him to report at Parsons on July 2, which he did. Claimant's rights were thus violated as he should have been notified of both vacancies so he could have made his own decision as to which, if either, he would accept.

Claimant was required, by direction of Management, to leave his home station. While away from his home station his meals and lodging were not furnished by Carrier. Consequently his actual expenses for them should be allowed. See Article 12, Rules 2 and 3 of parties' effective Agreement.

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 the Carrier violated the Agreement.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.