Award No. 6252

Docket No. MW-6287

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when they failed to compensate Acting Relief Foreman C. M. Horton for expenses incurred while relieving Bridge and Building Foreman's position at Lake Charles, Louisiana, during the period October 15, and October 24, 1950, inclusive;

(2) Mr. C. M. Horton be reimbursed in the amount of $36.25, because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. C. M. Horton was regularly assigned to the position of Assistant Bridge and Building Foreman on the Bridge and Building gang with headquarters at Monroe, Louisiana.

Mr. Horton was directed by Bridge and Building Supervisor Walker to go to Lake Charles, Louisiana, beginning October 15, 1950, for the purpose of acting as temporary foreman on Bridge and Building gang No. 4, until the position was filled in accordance with bulletin procedure.

Mr. Horton advised Supervisor Walker that he preferred to remain at his own headquarters and requested that he be relieved of the necessity of performing relief service at Lake Charles, Louisiana. Mr. Horton's request was declined, therefore, in accordance with the directive of Supervisor Walker, he went to Lake Charles, Louisiana, and performed service as Acting Bridge and Building Foreman from October 15, 1950, to October 24, 1950, both dates inclusive.

Mr. Horton did not make application for the permanent position of Bridge and Building Foreman at Lake Charles, and the successful bidder was assigned thereto beginning on October 25, 1950, at which time Mr. Horton returned to his regular position at his regularly assigned headquarters.

During the time in which Mr. Horton performed service at Lake Charles, Louisiana, by direction of the Management, he incurred expenses totaling thirty-six dollars and twenty-five cents ($36.25) for board and lodging.

Expense account covering the expenses incurred was submitted to the Carrier which was returned to the claimant with a letter formally declining to allow the expense account as submitted.

for available work in the order of their seniority. It precludes the Carrier moving up a man right in the gang where expenses would not be involved when there is a senior employe available elsewhere. The rule is mandatory; it identified this claimant as the specific individual to be used under the provisions of Rule 11 (c). It is a widespread practice in the application of agreement rules for employes to protect their seniority rights without cost to the Carrier. Why should the Carrier be expected to pay these expenses when it could have protected the work without expenses being involved if it were not for the rule requiring that this claimant be used?

Even if it could be said that this claimant expended some money in protecting his seniority as a Foreman, it could not have been very much. There is a differential in the earnings of a Foreman as compared with an Assistant Foreman and it must be admitted that the claimant would have been at substantial expense for meals at home in proportion to what he paid out for meals at Lakes Charles. On other occasions he would derive substantial gain in protecting temporary work as well as protecting his seniority against the time when he will secure regular assignment to a Foreman position.

Rule 26 cannot apply to this case because it covers employes taken off their assigned territory in emergency cases. No phase of the circumstances described in that rule was present in this case.

Rule 11 (c) provides ". . . vacancies may be filled temporarily, pending bulletin and assignment, by . . . the senior available competent employe holding seniority in that classification and not able to hold position in that classification account reduction in forces." That is the exact description of the situation here involved and to further identify the employe to be used, Rule 3 (f) says it is the senior laid off employe in his respective rank. Mr. Horton was the senior employe laid off in the rank of Foreman due to "force reduction" which is the title of the rule.

With reference to Mr. Horton requesting to be excused, the Carrier has said he did not and the Employes have not proven that he did. Generally speaking, it is a practice, notwithstanding the provisions of Rules 3 (f) and 11 (c), to excuse senior employes on request if there are other employes in line and available but it is obvious that all employes in line cannot be excused because in that case there would be no one to fill the vacancy. In this particular case there was no one else available for the work and this claimant could not have been excused even if he had definitely made such a request. We are confident that if Mr. Horton had been ignored and someone without seniority as a foreman used, we would have had a claim from Mr. Horton which we could not have avoided paying under the rules.

With reference to the matter of sleeping and cooking facilities, we have quoted the rule that covers camp cars. The cars at Lake Charles met the requirements of this rule. The foreman who left this position which created this vacancy had used the cars for sleeping and cooking. There is nothing in the rule that would require the Carrier to supply those things not mentioned therein as a requirement. We do not believe it could be held to be a burdensome thing for Mr. Horton to take what he considered necessary or desirable for his comfort in the way of bedding and cooking equipment over and above what the Carrier furnishes in all outfits when he went to Lake Charles for this temporary service. It would not have required any particularly unusual effort on his part to get these things to and from his place of work.

Notwithstanding all we have said about the sleeping and cooking situation, the Carrier holds that aside from the camp car situation the rules do not require the payment of expenses in cases of this kind.

(Exhibits not reproduced).

OPINION OF BOARD: When the present claim arose, Claimant C. M. Horton was regularly assigned to a position of Assistant Bridge and Building Foreman, with headquarters at Monroe, Louisiana. However, from October

15 to 24, 1950, inclusive, Claimant served temporarily as foreman of Bridge and Building Gang No. 4 at Lake Charles, Louisiana. Claimant did not bid on the Lake Charles position (in fact the Employes contend, and the Carrier denies, that he requested to be permitted to remain on his regular assignment), but filled it strictly on a temporary service basis until the position could be filled through required bulletin procedure; the successful applicant for the position was assigned thereto on October 25, 1950, at which time Claimant returned to Monroe. While serving at Lake Charles, Claimant incurred meal and lodging expenses in the amount of $36.25, for which he now seeks reimbursement.

Rule 25 of the applicable agreement covers temporary or emergency travel service. The pertinent part of this rule is as follows:

> "Employes in **temporary** or emergency **service**, except as provided in Rule 21, required by the direction of the management to leave their home station * * * (method of payment specified)
>
> "* * * Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed." (Emphasis added).

Claimant clearly performed "temporary service", regardless of what the parties in their disagreement choose respectively to call it; moreover, it was service at Lake Charles, thus away from his home station. But the Carrier contends that Claimant did not go to Lake Charles by the direction of the management; rather, that he went there in the exercise of his seniority.

In Award 5293 this Division considered a fact situation and rules so similar to those involved here as to present the same ultimate issue for decision. The Carrier involved in that case likewise argued that there had been no direction by management but simply an exercise of seniority rights. Neither there nor here did the employe involved volunteer or apply for the temporary service; neither there nor here did the employe desire to apply for the position on a permanent basis. In Award 5293 this Division saw in the very type of situation now under consideration a recognition by the Carrier of its committment to recognize the seniority of the employe, but the Division rejected the contention that the employe had exercised his seniority rights and accordingly had not performed the service by the direction of the management—the very contention relied upon by the Carrier in the present case. While the Carrier here declares that it "just cannot agree with the conclusions reached in Award 5293", there appears to be no sufficient reason for this Division now to reverse its conclusion in Award 5293. It must be concluded that Claimant did perform the temporary service "by the direction of the management", and Rule 25 must be applied.

But the Carrier further contends that bunk cars equipped for sleeping and a kitchen car with necessary cooking equipment were available to Claimant at Lake Charles had he chosen to use them. To this the Employes respond that Claimant was not furnished the complete equipment customarily recognized as necessary to lodging accommodations; that an employe should not be expected to carry a bed and cooking utensils for temporary work, nor to sleep in the bed of some other employe. Without attempting to resolve the conflict as to just what the Carrier did offer Claimant in the way of living accommodations, it suffices to say that the Carrier clearly did not provide **meals**, an essential element of the alternative to providing actual necessary expenses under Rule 25.

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

Claim (1) and Claim (2) both sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of July, 1953.