

Award No. 7648

Docket No. MW-7283

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, 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 Agreement when it refused to allow Mr. C. M. Horton actual necessary expenses incurred for meals taken while in temporary service as Foreman of B. & B. Gang 9, from June 19 to June 30, 1953, inclusive;

(2) Mr. C. M. Horton now be allowed and paid for the meal expense so incurred amounting to \$14.40.

EMPLOYES' STATEMENT OF FACTS: Account of the death of Bridge and Building Foreman A. Martin, a vacancy existed in the position of Foreman of Bridge and Building Gang No. 9 and the position was bulletined as required by agreement rules.

Pending bulletin and assignment of the vacancy to the successful applicant, Mr. C. M. Horton was directed to leave his regular assignment as assistant Bridge and Building foreman on Bridge and Building Gang No. 3 and to serve temporarily as Foreman of Bridge and Building Gang No. 9, and was in such temporary service from June 19 to June 30, 1953, inclusive. Lodging was provided by the Carrier during that period but no meals were provided. The meals were, therefore, purchased by Mr. Horton during this period at a total cost of \$14.40. An expense account was therefore submitted covering the meal expense, but Carrier refused to allow it and has similarly refused to allow the claim formally filed in connection therewith.

The agreement in effect between the two parties to this dispute dated August 1, 1950, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The parties are in agreement that Claimant was in temporary service during the period here involved as may be noted from repeated references to "temporary work", in the correspondence exchanged in the handling of this dispute on the property, copies of which are attached hereto as Employees Exhibit "A".

In as much as Mr. Horton was required to leave his assigned position and home station and to go to Tiaga, Louisiana, to perform temporary emergency service, Rule 25 is clearly applicable to the dispute, the rule reading:

and none of the conditions of Rule 26 prevailed. This was not an emergency case; the claimant was not taken off his assigned territory—not even off his regular position; and he had available to him the outfit cars of the gang where he performed the service.

The Carrier holds that neither of the rules cited by the Employees or any other of the rules of the Agreement can be stretched to require or authorize the payment of expense allowance here claimed.

(Exhibits not reproduced).

OPINION OF BOARD: The parties are in dispute as to whether Claimant C. M. Horton was directed by the Carrier to go to Tiaga, Louisiana for temporary service following the death of Building and Bridge Foreman A. Martin, or whether Claimant, as the senior unassigned foreman, elected to go during the period the foreman's position was under bulletin. The fact that he was willing to do so does not mean he was not required to perform service away from his regular headquarters. See Awards 5371, 5174, 4850 and 4461. Regardless of whether he was directed to go, or he elected to exercise his seniority rights, this was temporary service away from Claimant's headquarters and the Carrier is required by Rule 25 to provide both meals and lodging for those filling such assignments. "Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed." See Award 6252.

The parties are also in dispute as to whether the Carrier provided both lodging and meals for Claimant during the period in question. The Carrier contends that "B. & B. Gang No. 9 had outfit cars, including foreman's car, which was available for Mr. Horton's use."

Claimant does not deny that he was provided with sleeping quarters. Nor does he claim compensation for such. He simply says that he was not provided with meals; and the record discloses no proof that meals were made available to him.

We cannot agree with Carrier's contention that this case warrants a different conclusion from that reached by this Board in Award 6252, involving the same agreement, the same parties, the same claimant and facts that differ only slightly. The claim has merit and must 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

That the Carrier violated the Agreement.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.