

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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 Machine Operator E. E. Tillman actual necessary meals and lodging expenses incurred while in temporary service as Operator of Multiple Tamper No. 9 during the months of March, April, and May, 1952;

(2) Machine Operator E. E. Tillman now be reimbursed for the actual necessary meals and lodging expense incurred while in the temporary service referred to in part (1) of this claim which amounts to a total of \$160.10.

EMPLOYEES' STATEMENT OF FACTS: On March 11, 1952, Machine Operator E. E. Tillman returned from his 1952 vacation assignment and promptly called his immediate superior to determine what work assignment he was to assume. He was directed to go to McCracken, Kansas, on the Colorado Division to operate Multiple Tamper No. 9 for two days, following which he could then fill a position expected to be open on the Central Division.

However, he was not released from the temporary service as Operator of Multiple Tamper No. 9, but was required to continue such temporary service. The position of machine operator on Multiple Tamper No. 9 was bulletined early in April and the Claimant was required to protect the position pending expiration of the bulletin and assignment of the successful applicant to the position. The Claimant did not place a bid for the position and it was subsequently awarded to Machine Operator C. C. Cooper.

However, Mr. Cooper was not assigned to the position of operator on Tamper No. 9 and the Claimant was required to protect that position until several weeks following his application for and being awarded the position as Operator of Tamper No. 6.

Mr. Tillman submitted an expense account for the month of March, which was returned to him with the advice that expenses would only be allowed up to March 21, 1952, inasmuch as a camp car had been made available to him thereafter.

The camp car made available to him had just recently come out of the shops, being all newly painted, but was not equipped with a cooking stove,

There would have been no particular hardship to this claimant to provide necessary bedding, as other employes do, and utilize the bunk car which was available to him. Meals were available at the location where he was working; he would have had some meal expense wherever he might be, even if he had been furnished a kitchen car or, for that matter, if he had been living at home. Outfit cars are furnished for convenience of the employes — not because the Carrier is liable for personal expenses if they are not furnished, except in situations where the Agreement so specifies.

Since Rule 33 does not say that the Carrier is liable for this claimant's personal expenses incurred in protecting work in line with his seniority, merely because it did not furnish him a kitchen car with cooking equipment and he did not elect to use the bunk car furnished for lodging purposes because it did not suit him, there is no Agreement requirement or authority for the payment of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties do not agree as to a correct statement of facts in this case. However, it appears from the record that Claimant E. E. Tillman returned from his vacation in March 1952 to find that his former position had been terminated due to a reduction in force. He reported to his employing officer and was directed to fill, on a temporary basis, the position of Machine Operator on Multiple Tamper No. 9, this being the only job open to him in accordance with his seniority. The job was under bulletin and Claimant was not an applicant for it.

When Claimant was sent to fill this position it was not expected to be available to him for more than a few days. But due to changed circumstances his stay extended from March 19 to May 9, 1952. The Carrier paid Claimant's expenses through March 21, and thereafter made available to him a camp car, which had just been returned from the shop, newly painted. Claimant contends that this car furnished him was not properly equipped for living quarters, since it had only the following items in it: one heating stove, one water bucket and dipper; two cots (without mattresses, pillows, blankets or linen); a broom and a lamp. And there was no provision for Claimant to get meals except elsewhere.

The Carrier contends that Claimant accepted this temporary assignment as the only thing due him according to his rights under Rule 1(c); and that in going to it he was accepting a position in the exercise of his seniority rights, which under Rule 8 he must do "without causing extra expense to the railroad".

The Carrier further claims that the camp car turned over to Claimant was in excellent condition and contained the usual equipment found in such cars. It is not customary, it is claimed, for the Carrier to supply bedding and linen. The employes are expected to provide this themselves. This is a well-established practice, according to the Carrier's statement. Therefore, the officer in charge informed Claimant that no further expenses would be allowed him after the car was provided.

It is for us to decide which of the several rules cited by the parties are the controlling ones in the instant case. Our attention is called to the Temporary Service Rule (Rule 25 of the August 1, 1950 Agreement).

"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. . . .

". . . Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed." (Emphasis added)

This is a rather broad and general rule covering not only travel time but also the matter of added expense to an employe who must go away

from his home or headquarters to fill not only emergency service but other temporary assignments as well.

Taking Rule 33 and Rule 25 together, it is clearly the intention of the parties not to require the Carrier to pay for meals and lodging where adequate facilities are provided for the employees to live in the camp cars. Rule 33 contemplates the providing of boarding facilities by the Carrier when employees are assigned to outfits requiring housing and boarding facilities away from home. If all these facilities are furnished the expense of meals will not be paid. If not, the implication of the two rules (33 and 25) is plain: the Carrier is obligated to make up any reasonable out-of-pocket expense this assignment may involve. Award 4741.

It is clearly the intent of Rule 33 that the facilities therein described will not only be furnished and maintained, but also they will be available to the employee for use. A camp car with two cots, with no mattresses, no blankets, no pillows and no linen is hardly suitable lodging quarters for an employee who is temporarily away from home. And while it may be customary for those regularly assigned to such camp cars to provide their own bedding (and particularly where they are accompanied by their families) there is no evidence in this record that it has been the practice to require employees on such temporary assignments as the one here involved to travel with the kind of household equipment that was lacking in the camp car provided for this Claimant.

Since neither meals nor proper lodging facilities were provided for Claimant Tillman from March 21 to May 9, 1952, and since he was on what is clearly recognized as a temporary service assignment, this claim has merit.

If Claimant had been traveling to protect his seniority on a regular assignment, we agree that he would have to do so without expense to the Carrier. There may be other situations clearly covered by Rule 8. But in the instant case, it is obvious that Rules 25 and 33 are the controlling ones. And the general effect of these, as we have repeatedly observed, is to recognize the commonly accepted principle of employer-employee relationship in regard to temporary assignments away from home or headquarters. The employer pays the living expenses. Awards 3698, 4741, 6252 and 7648.

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 Agreement was violated.

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.