

Award No. 10501
Docket No. SG-9871

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Central of Georgia Railway Company:

That Mr. I. K. Dean, Assistant Signalman, regularly assigned to Signal Crew No. 1, be paid expenses in amount of \$36.66 which were incurred while relieving the Signal Maintainers at Leeds, Alabama, and East Point, Georgia, during the month of July, 1956. [Carrier's File No. SIG 428]

EMPLOYEES' STATEMENT OF FACTS: Prior to and subsequent to the dates embraced in the instant dispute, the claimant, I. K. Dean, was regularly assigned as Assistant Signalman in Signal Gang No. 1, with assigned headquarters at the Signal Gang. The claimant bid for and was assigned by bulletin to the Assistant Signalman's position.

On July 2, 3, 4, 5, and 6, 1956, the Carrier assigned the claimant to relieve the Signal Maintainer at Leeds, Alabama, and on July 23, 24, 25, 26, 27, 30, and 31, 1956, the Carrier assigned the claimant to relieve the Signal Maintainer at East Point, Georgia.

The claimant **did not** apply for, request, or express a desire for the relief work to which the Carrier assigned him during the month of July 1956. He was directed and instructed by the Carrier to relieve the positions on the dates cited above.

At the close of the month of July 1956, the claimant reported his expenses incurred to the Carrier on Form 1278 used for that purpose, as follows:

"Central of Georgia Railway Company

Form 1278

TRAVELING, OFFICE AND INCIDENTAL EXPENSES INCURRED BY I. K. Dean

EMPLOYED AS Signal Maintainer During July 1956

Furthermore, for the sake of argument alone, if the position of the Employees were true, and such employees used on maintenance vacation relief work were entitled to unlimited reasonable living expenses, then why did the Employees want to meet the Carrier in conference, and sign the Supplemental Agreement effective June 1, 1955? If vacation relief men were to be treated the same as any employee sent away from his home station to do a job, then certainly the Supplemental Agreement is not worth the paper it is written on. Just the opposite, however, is true—the Supplemental Agreement was written and signed for a purpose. The purpose and clear language of the Supplemental Agreement is exactly as it has been shown in this submission to the Board.

CONCLUSION

The Board has long held that it does not possess the authority to write rules. Carrier respectfully urges that a sustaining award would do just that, and further urges that this is purely a matter for negotiation by the parties under Section 6 of the Railway Labor Act.

There is no evidence of any violation of the current agreement, and the burden of proof is upon the petitioning Employees. The claim is not valid, and should certainly be denied beyond any shadow of a doubt.

All facts submitted in support of Carrier's position in this case have been presented orally or by correspondence to the duly authorized representative of Employees, and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented to us for decision is whether the work performed by the Claimant Dean should, for the purposes of determining the expenses to be allowed to him, be classified under Rule 28 of the Agreement effective July 1, 1950, or under a Supplemental Agreement which became effective June 1, 1955. It is the position of the Petitioner that the rules of the 1950 Agreement apply and it is the position of the respondent Carrier that the Supplemental Agreement of 1955 governs.

Claimant held a regular assignment as an Assistant Signalman. During July, 1956, without having applied for any Signal Maintainer's vacation relief work, and in the absence of anyone else expressing preference for such work, he was sent to two distant points to cover the positions of two vacationing maintainers.

We cannot isolate the Supplemental Agreement which amends only Rule 38(h) but must interpret the Agreement of 1950 in its entirety as amended by the Supplemental Agreement. The Board is required to take the Agreement as it is written. It cannot rewrite the Agreement by interpretations putting into it that which the parties left out.

Let us consider then just what the parties to the Agreement effective July 1, 1950, as amended by the Supplemental Agreement effective June 1, 1955, have written. The Supplemental Agreement reads in part, as follows:

"SUPPLEMENTAL AGREEMENT

* * * * *

"It is agreed that:

"Effective June 1, 1955, Rule 38 (h) is amended to read as follows:

* * * * *

"Effective June 1, 1955, vacation relief work will be performed by Assistant Signalman or Helper in the gang, or furloughed men if there is no gang working. The senior qualified man applying will be given preference for this work. (Emphasis ours.)

"While on maintenance vacation relief work away from his home station, the employe will be allowed a maximum of \$4.00 per day expenses (maximum \$20.00 per week). No traveling or other expenses will be allowed, and rate of pay will be that of the position on which he is relieving, or his own rate in the gang, whichever is the higher."

We will follow with Rule 38 (i) of the Agreement of 1950:

"Employees desiring to do relief work on temporary positions or vacancies will notify the Signal Engineer in writing; failing to do so, they will not be called or considered for such work. They will respond to calls for such work until they have notified the Signal Engineer of a desire to cancel their notice for the work."

And conclude with Rule 28 of the Agreement:

"Actual expenses will be allowed employees while away from their regular assigned home station in connection with their assignments. It is not the intention to pay for the expense of the noon-day meal for signal maintainers when working on their designated sections."

By a careful reading of these foregoing rules we can come to but one conclusion; Claimant was not bound by the expense limitation set forth in the Supplemental Agreement he not having applied for vacation relief work. He should not have been called to perform work away from his station but responded to the call in compliance with the requirement set forth in the last sentence of Rule 38 (i). His expenses should have been allowed as set forth in Rule 28.

The Carrier, contends, however that by the language of the Supplemental Agreement it is bound to call an Assistant Signalman or Helper in the gang, or furloughed men for vacation relief if there is no gang working; that by the same token, if none of the class of employees named in the Supplemental Agreement has applied for vacation relief work, the Carrier has the right to call a Signalman (Claimant) who has not applied and it is his duty to respond, the expenses allowed to him to be governed by the Supplemental Agreement.

This position is untenable as has heretofore been demonstrated in this Opinion. Prior to the signing of the Supplemental Agreement in June of 1955, the practice of the Carrier had been, generally, to furnish vacation relief workers from men who at the time had no assigned position and were not entitled to any expenses. It follows, logically, if no assigned Employee as provided for in the Supplemental Agreement applies for vacation relief work, the Carrier is still at liberty if it so desires to furnish vacation relief workers from those workers who have not yet been assigned to any position, as before.

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 Agreement has been violated.

AWARD

The claim is allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1962.