Award No. 11442
Docket No. MW-10784

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it refused to reimburse Track Apprentice H. L. Daigre for time consumed in going from and to his headquarters at Vicksburg, Mississippi on May 5 and May 25, 1957, in connection with a relief work assignment at Meridian, Mississippi.

(2) That Track Apprentice Daigre be allowed pay at straight time rate for 4 hours and 5 minutes in going from Vicksburg to Meridian, on May 5 (from 9:25 P. M., May 5, 1:30 A. M., May 6) and for 4 hours and 20 minutes in returning to Meridian, Mississippi via Train No. 205, May 25, 1957 (from 2:50 A. M., to 7:10 A. M.).

EMPLOYES' STATEMENT OF FACTS: Mr. H. L. Daigre is a regularly assigned track apprentice and is regularly assigned to headquarters at Vicksburg, Mississippi. He was directed and assigned to relieve the regular section foreman at Meridian, Mississippi, effective as of May 6, 1957. He was advised that he would not be allowed automobile mileage inasmuch as passenger train service from and to Vicksburg and Meridian, Mississippi was available. It was necessary for the Claimant to leave his regular headquarters on May 5, 1957, in order to protect the Carrier's interest and the position of Foreman at Meridian and there were no trains running during regular working hours.

The Carrier failed to reimburse the Claimant for the travel time consumed in going from and to Meridian, although meal and lodging expenses were allowed during the time he was relieving the section foreman at Meridian, Mississippi.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The parties are agreed that Rule 41 is controlling in the instant case, although there is a difference of opinion with respect to what particular paragraph or paragraphs thereof is applicable and

ity. Claimant Daigre was not required by direction of the Carrier to fill the assignment, and this is another reason why he is not entitled to travel time pay under the provisions of Rule 41(b).

In summary, the Carrier submits that the travel time pay requested here is not justified because:

1) Rule 41(d), the special rule which covers Track Department employes filling temporary Track Foremen's vacancies, provides for expenses and transportation for such employes, and says nothing about travel time pay, and has never been interpreted or applied to mean otherwise.

2) Claimant Daigre was covered by the provisions of Rule 41(a) and therefore excluded from the provisions of Rule 41(b), which specifically states that such employes are not entitled to travel time pay.

3) Claimant Daigre was not required by direction of the Carrier to fill the vacancy as contemplated by Rule 41(b), but instead he voluntarily elected and specifically requested to work the assignment, and therefore is not entitled to travel time pay for this reason too.

To hold in favor of the Organization would be to rewrite the rules and this Board has consistently held that this is beyond the Board's authority. See Awards 2557, 3050, 3590, 5438, 6287, 6365 and many others.

This claim is wholly without merit and it should be denied.

All relevant facts and arguments involved in the dispute have heretofore been made known to the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held a regular assignment to the position of Track Apprentice with headquarters at Vicksburg, Mississippi. On April 26, 1957 he inquired if any temporary Track Foreman or Section Foreman vacancies existed which he could fill. He was advised that three such vacancies would exist commencing May 6, 1957, viz., at Lindsay, Louisiana, Mound, Louisiana, and Graham, Mississippi. Claimant selected to fill the vacancy at Graham, Mississippi which is approximately 140 miles from Vicksburg. Mound, Louisiana is only ten (10) miles from Vicksburg. Claimant stated that he would drive his automobile so that he could visit relatives at Meridian. Carrier advised Claimant that he would not receive mileage allowance because there was train service available. Carrier was obliged to grant Claimant's request for assignment to the vacancy at Graham, Mississippi because he had more seniority than other available Track Apprentices.

Claimant first submitted a claim for mileage allowance. When this was declined because train service was available, Employes presented the claim now before us which is "for time consumed in going from and to his headquarters at Vicksburg, Mississippi, on May 5 and May 25, 1957, in connection with a relief work assignment at Meridian, Mississippi."

Employes contend that Claimant is entitled to such travel time under Rule 41(b) of the Agreement. Carrier argues that Rules 41 (a) (d) and (e) are applicable and that they do not provide for travel time. The entire Rule 41 provides as follows:

"ASSIGNMENTS TRAVELING

"Rule 41.

(a) Employes will be reimbursed for cost of meals and lodgings incurred not to exceed four dollars ($4.00) per day while away from and out of reach of their regular boarding and lodging place, outfit cars or regular headquarters, whether off or on their assigned territory, excluding time traveling and/or waiting. This rule not to apply to midday lunch customarily carrier by employes, nor to employes traveling in exercise of their seniority rights.

"TEMPORARY OR EMERGENCY TRAVEL SERVICE

"(b) Employes, except as provided for in Rule 42 and Section (a) of Rule 41, who are 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. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at pro rata rate.

"(c) If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station.

"(d) The past practice of using Track Department employes who desire to fill temporary vacancies as track foremen within the scope of their seniority territory will be continued and expenses will be allowed as provided in Section (a) Rule 41. Employes filling such positions on districts where passenger train service is not available will be allowed either bus fare or automobile mileage allowance for initial and return trip only. If they use their own cars, 'Mileage allowance' means the general allowance granted employes of this carrier who are authorized to use their automobiles for company business.

"(e) Employes will not be allowed time or expenses while traveling in the exercise of seniority rights, or between their homes and designated assembling points, or for other personal reasons."

Rule 41(a) is not limited to temporary assignments. It provides for lodging and meal expenses when an employe is away from his regular headquarters whether he is away because of his regular tour of duty or because of a temporary or emergency assignment. This Rule does not provide for travel time compensation.

Rules 41 (b), (c), (d) and (e) apply to temporary or emergency travel service. Travel time compensation is provided for only in Rule 41(b) and then only to employes "**who are required by direction of management,** to leave their home station." Carrier argues that this Rule is not applicable because Claimant "was not required to do anything." He was assigned to the position because he asked for it and because his seniority status gave him the right to the job. (Emphasis ours.)

It is admitted that the position of Section Foreman at Graham, Mississippi was a temporary vacancy. The vacant position was not posted or bulletined as required by the seniority rules of the agreement when a permanent vacancy exists. Claimant did not bid for such a permanent vacancy under the same rules. The mere fact that he was the senior Track Apprentice available and was given the choice of several temporary vacancies does not alter the fact that the position at Graham was temporary. As long as it was temporary, Rule 41(b) applies and Claimant was directed to fill that vacancy within the meaning of that Rule.

In Award 3495 (Carter) we said:

> "Claimant was eligible for promotion to the position of Section Foreman and one who could properly be used to fill temporary vacancies of Section Foreman. In filling such a vacancy it was the duty of the Carrier to fill it in accordance with seniority rules. It was not an exercise of seniority by Claimant within the meaning of the last sentence of the quoted rule."

See also Awards 10988 (Hall), 6170 (Wenke) and 7648 (Larkin).

Carrier's position is somewhat inconsistent and illogical. On November 21, 1957 J. C. Jacobs, Engineer Maintenance of Way wrote to Employes' General Chairman as follows:

> "After talking to Division people I must confirm my declination of the claim in favor of H. L. Daigre, track apprentice, Vicksburg Division, your letter September 5, file V-11-T-7, and mine November 1.
>
> "Rule 41(d) which refers to relief foremen, reads:
>
> > 'Employes filling such positions on districts where passenger train service is not available, will be allowed either bus fare or automobile mileage allowance for initial and return trip only.'
>
> "In this instance, train service was available."

The claim is not for bus fare or automobile mileage, but for travel time from and to Claimant's headquarters at Vicksburg. On appeal, Carrier's top appellate officer declined the claim in a letter dated January 13, 1958, which reads, in part, as follows:

> "My investigation develops that the Claimant requested to fill the temporary section foreman's vacancy and was permitted to do so in accordance with his seniority. There is no provision in the agreement that provides for traveling time pay for employes traveling in exercise of their seniority rights. In regard to such traveling time, Rule 41(e) of the agreement specifically states:
>
> > 'Employes will not be allowed time or expenses while traveling in the exercise of seniority rights, or between their homes and designated assembling points, or for other personal reasons.'
>
> "Under the circumstances, I cannot perceive any violations of the agreement. Consequently, the claim is declined."

The fact is that Claimant was paid expenses. The record shows that he was paid a total of $75.00 for food and lodging. If Rule 41(e) alone is applicable, why did Carrier pay expenses? Irrespective of this inconsistency, the other fact is that Carrier abondoned its previous position that the claim is invalid because of Rule 41(d).

Carrier now argues that the claim should be denied because Rule 41(d) is a special rule which applies to Track Department employes who fill vacancies as track foremen. Since this is a special rule, Carrier argues, it takes precedence over Rules 41(b), (c) and (e). Rules 41(b), (c), (d) and (e) must be read together. All of them apply to temporary or emergency travel service: Rule 41(b) provides for travel time pay when vacancies are filled at the direction of management. Rule 41(d) provides that, in addition to travel time pay, Track Department employes who fill temporary vacancies as track foremen are allowed expenses for meals and lodging not to exceed $4.00 a day while away from their regular headquarters.

This is the intent of the parties from the entire Rule 41.

Carrier also argues in its Brief that the Employes "would not have allowed more than 23 years to elapse without claim if Track Apprentices filling temporary vacancies as foremen were, in fact, entitled to the payments they seek. The acquiescense of the Employes over this extended period of time is conclusive proof that Rule 41(b) does not apply to them." There is nothing in the record to justify this conclusion. Certainly no claim was made on the property that the Employes have acquiesced to that interpretation of the rules.

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 is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.

DISSENT TO AWARD NO. 11442,
DOCKET NO. MW-10784

Award 11442 is based on the majority's erroneous conclusion "Rule 41(d) provides that, **in addition to travel time pay,** Track Department employes who

fill temporary vacancies as track foremen are allowed expenses for meals and lodging * * *." Rule 41(d) is specific in providing solely that "expenses will be allowed as provided in Section (a) Rule 41" to "Track Department employes who desire to fill temporary vacancies as track foremen." If it had been intended by the parties to allow travel time pay under Section (b) in addition to expenses under Section (a) they could and should have used appropriate language to so provide. This Board has no authority to add to or otherwise amend rules.

Had the majority construed Rule 41 in its entirety as it professes to have done, it would have found that in relation to the other paragraphs, paragraph (d) is very specific and special in nature, whereas the other paragraphs are general in nature. It is a settled rule of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former. Paragraph (d), except insofar as it refers to paragraph (a), is complete in itself, viz., it provides that the practice of using Track Department employes to fill vacancies as track foremen will be continued; that employes so used will be paid expenses per paragraph (a), and that where passenger train service is not available the employe will be allowed either bus fare or automobile mileage. Nothing was left to speculation and nothing in paragraph (d), contrary to the majority's conclusion, provides for payment of travel time. In writing Rule 41 as they did, particularly paragraph (d), the parties did manifest their intent, but that intent is plainly not what the majority purported to find.

The majority otherwise overreached itself in summarily rejecting Carrier's position that Rule 41(b) had never been applied in cases of this kind throughout the years. There was no claim on the property by the Employes that Rule 41(b) had always been applied in cases covered by paragraph (d).

For the reasons stated and others, Award 11442 is erroneous and we dissent.

G. C. White

P. C. Carter

W. H. Castle

D. S. Dugan

T. F. Strunck