

Award No. 14779
Docket No. CL-15542

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Systems Committee of the Brotherhood (GL-5725) that:

1. Carrier violated, and continues to violate, the Clerks' Rules Agreement when it failed and refused to allow necessary expenses to an employe not regularly assigned to road service, who was temporarily required to perform service away from his headquarters.

2. Carrier shall now be required to compensate employe R. A. Hoff for the following expenses necessitated in his traveling to and from his headquarters to Mitchell, South Dakota to fill Positions 6490 and 6491.

Date	Location	Meals	Miles	AUTO ALLOWANCE	TRAVEL TIME
				at 7c per mile	3 hr. 30 min.
3/8/64	Mitchell & Ret.	\$1.58	232	\$16.24	\$8.42
3/14	Mitchell & Ret.	1.58	232	16.24	8.55
3/15	Mitchell & Ret.	1.58	232	16.24	8.42
3/21	Mitchell & Ret.	1.58	232	16.24	8.55
3/22	Mitchell & Ret.	1.58	232	16.24	8.42
3/28	Mitchell & Ret.	1.58	232	16.24	8.55
3/29	Mitchell & Ret.	1.58	232	16.24	8.42
4/4	Mitchell & Ret.	1.58	232	16.24	8.55
4/5	Mitchell & Ret.	1.58	232	16.24	8.42
4/11	Mitchell & Ret.	1.58	232	16.24	8.55
4/12	Mitchell & Ret.	1.58	232	16.24	8.42
4/18	Mitchell & Ret.	1.58	232	16.24	8.55
4/19	Mitchell & Ret.	1.58	232	16.24	8.42
4/25	Mitchell & Ret.	1.58	232	16.24	8.55
4/26	Mitchell & Ret.	1.58	232	16.24	8.42
5/2	Mitchell & Ret.	1.58	232	16.24	8.55
5/3	Mitchell & Ret.	1.58	232	16.24	8.42

5/9	Mitchell & Ret.	1.58	232	16.24	8.55
5/10	Mitchell & Ret.	1.58	232	16.24	8.42
5/16	Mitchell & Ret.	1.58	232	16.24	8.55
5/17	Mitchell & Ret.	1.58	232	16.24	8.42
5/23	Mitchell & Ret.	1.58	232	16.24	8.55
5/24	Mitchell & Ret.	1.58	232	16.24	8.42
5/30	Mitchell & Ret.	1.58	232	16.24	8.55
5/31	Mitchell & Ret.	1.58	232	16.24	8.42

EMPLOYEES' STATEMENT OF FACTS: Employee R. A. Hoff, who has a seniority date of September 9, 1960 in Seniority District No. 42, is a furloughed employee in that district and as such is available for unfilled new positions or temporary vacancies of thirty (30) days or less duration as provided in Rule 12(e).

Employee Hoff's residence or headquarters is Vermillion, South Dakota.

On December 31, 1963, Superintendent L. H. Walleen advised the Agent at Vermillion, S. Dak. as follows:

"Austin, Minn. 31

Agent Vermillion

Please notify furloughed clerk Ray Hoff that under new Schedule of trains No. 7 and 8 will need relief Yard Clerk at Mitchell on Saturday and Sunday of each week and instruct him to contact P.M.L. at Mitchell regard performing this relief work each week commencing Saturday Jan 4th Advising B-3101.

L.H.W. 220 P. M.

In accordance therewith employee Hoff was instructed to protect the Yard Clerk rest day relief work at Mitchell, S.D. on Saturday and Sunday each week.

Carrier made no arrangement to provide employee Hoff with transportation between Vermillion and Mitchell, S.D. therefore, it was necessary for employee Hoff to use his personal automobile to transport himself between Vermillion and Mitchell to comply with Carrier's instructions. Neither did the Carrier make any arrangements to compensate employee Hoff for travel time or to reimburse him for expenses incurred while providing the two day's rest day relief at Mitchell.

Carrier's Form 132-Rev-Statement of Business Expense, covering meals, auto allowance and travel time for the months of January, February March and April were submitted to Superintendent Walleen by employee Hoff. Superintendent Walleen, in a letter to employee Hoff datd May 22, 1964 copy of which is submitted as Employees' Exhibit "A", declined to allow any of the items claimed. Form 132-Rev-Statement of Business Expenses, covering cost of meals, auto allowance and travel time for the month of May 1964 was disallowed by Superintendent Walleen in his letter to Employee Hoff dated June 2, 1964. Copy of that letter is submitted as Employees' Exhibit "B".

Appeal from the decision of Superintendent Walleen was taken to Mr. S. W. Amour, Assistant to Vice President under date of July 13, 1964. However, in consideration of the language of Section 3 of Article V of the Agreement of August 21, 1954 providing that "no monetary claim shall be allowed retroactively for more than 60 days prior to the filing hereof" and Superintendent

able for Work' employees are to be used, the senior employe shall be given preference. Unless or until a furloughed employe has filed an 'Available for Work' form in accordance with the provisions of this paragraph, the carrier shall have no obligation to recall him for unfilled new positions or temporary vacancies of thirty (30) days or less duration, nor will there exist any basis for claim because of his not being so called. 'Available for Work' forms filed under the provisions of this section shall continue in effect for not less than sixty (60) calendar days from date of filing and will remain in effect thereafter until written notice of cancellation is filed in duplicate with the carrier officer authorized to bulletin and award positions, with copy to the local and division chairmen. The carrier officer shall promptly sign and return to the employe, as his receipt, one copy of the cancellation notice. The cancellation notice will not become effective until receipted for by the carrier. If no furloughed employe has filed an 'Available for Work' form indicating a desire to be recalled for unfilled new positions or temporary vacancies of thirty (30) days or less duration at the location where such position or vacancy exists, or if an employe has filed an 'Available for Work' form indicating a desire to be recalled for unfilled new positions or temporary vacancies of thirty (30) days or less duration at such location but lacks sufficient fitness and ability for the particular position and no employe is hired therefor, furloughed employes in the seniority district having sufficient fitness and ability may be recalled in the reverse order of seniority and if recalled will be required to return to service at such location. If no furloughed employe has filed an 'Available for Work' form indicating a desire to be recalled for unfilled new positions or temporary vacancies of thirty (30) days or less duration at the location where need for tag end rest day relief exists, or if an employe has filed an 'Available for Work' form indicating a desire to be recalled for unfilled new positions or temporary vacancies of thirty (30) days or less duration at such location but lacks sufficient fitness and ability for the particular position, furloughed employes in the seniority district having sufficient fitness and ability may be recalled in the reverse order of seniority and if recalled will be required to return to service at such location. Furloughed employes recalled under the provisions of this section failing to return when called, will be required to give satisfactory reason for not doing so, otherwise they will terminate their seniority."

Claimant Hoff was properly and fully paid for all service performed on and/or in connection with the tag-end rest day relief service here involved.

Attached hereto as Carrier's Exhibit "A" is a copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of August 18, 1964.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant, R. A. Hoff, was a furloughed employe.

On December 31, 1963, Superintendent L. H. Walleen advised the Agent at Vermillion, South Dakota, as follows:

"Agent Vermillion

Please notify furloughed clerk Ray Hoff that under new Schedule of trains No. 7 and 8 will need relief Yard Clerk at Mitchell on Satur-

day and Sunday of each week and instruct him to contact P.M.L. at Mitchell regard performing this relief work each week commencing Saturday Jan 4th Advising B-3101."

It is undisputed that pursuant to that message Claimant was instructed, in compliance with the Agreement, to protect the Yard Clerk rest day relief work as Mitchell, South Dakota, on Saturday and Sunday each week—a tag-end rest day relief service. Also, the dates, expenses and travel time, as set forth in the Claim, stand undisputed. The issue is whether Claimant is contractually entitled to reimbursement for those items. Petitioner pleads in the affirmative citing Rules 37 and 38 of the Agreement. Carrier replies that the provisions of those Rules "do not apply to extra or unassigned furloughed employes, such as claimant Hoff, but instead apply only to regularly assigned employes * * *"

The pertinent provisions of the cited Rules are:

RULE 37—ROAD SERVICE

"(a) Employes not regularly assigned to road service, who are temporarily required to perform service away from their headquarters which necessitates their traveling, shall be allowed necessary expenses while away from their headquarters and will be paid pro rata for any additional time required in traveling to and from the temporary assignment * * *"

* * * * *

RULE 38—REST DAY RELIEF TRAVEL TIME

Employes assigned to rest day relief service who are required to travel as a part of their assignment shall be paid travel time as hereinafter provided * * *"

The term "Employes" in each of the Rules stands without qualification. It, therefore, includes a furloughed employee.

Carrier would have us insert, in each Rule, the word "regularly assigned" before the word "Employes." To do so would be beyond our powers. It is firmly established that this Board may not add to, subtract from or otherwise alter the terms employed by and agreed to by the parties; and, the terms must be given their common usual meaning unless there is evidence that the parties intended any qualification of the term "Employes."

Inasmuch as Claimant was an employe not regularly assigned to road service (Rule 37); and, he was assigned to rest day relief service and required to travel as a part of that assignment (Rule 38), we find that he is contractually entitled to reimbursement as prayed for in the Claims. See, and compare Award Nos. 5488 and 5704.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties wived oral hearing;

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1966.