

Award No. 14859
Docket No. MW-13161

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Carrier is in violation of the effective Agreement when it made and continues to make deductions from the monthly compensation of vacationing monthly-rated section foremen whose monthly compensation includes house rent allowance in addition to regular monthly salary allowance.

(2) Each Section Foreman from whose monthly compensation such aforesaid deductions have been or are made shall be reimbursed for all of such deductions made from his monthly compensation.

EMPLOYES' STATEMENT OF FACTS: Under the provisions of the Agreement controlling in this case, Section Foremen are compensated on the basis of monthly rates and are either furnished with tenable houses or "Where houses become untenable, or where houses are not furnished, line foremen will be allowed ten dollars (\$10.00) per month and Yard Foremen five dollars (\$5.00) per month in addition to regular monthly salary allowed when house is furnished."

While regularly assigned section foremen are on vacation, the Carrier has failed and refused to pay them "the daily compensation paid by the Carrier for such assignment." Instead, the Carrier has made deductions from the monthly compensation which contractually accrues to said section foremen by deducting therefrom all compensation allowed in lieu of housing for each day of vacation. **Section Foremen who are furnished houses are not required to give up occupancy of company houses while they are on vacation!**

Claim as set forth herein was timely and properly presented and handled on the property in the usual and customary manner.

The Agreement in effect between the two parties to this dispute dated April 28, 1950, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

the provisions of the agreement applicable to such allowances by claiming that the vacationing foreman should also receive a house rent allowance.

OPINION OF BOARD: Brotherhood's claim is based on Sections (a) and (c) of Article 7 of the Vacation Agreement and on the National Interpretation of Article 7 (a). The pertinent part of Article 7 reads:

"Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment.

* * * * *

(c) An employee paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement.

* * * * *

The Interpretation of (a) reads:

"This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the Carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing Carrier."

Since there is no dispute about the facts alleged in the Claim, the case turns on whether the house rent allowance provided in Rule 18 of the basic Agreement is part of the daily compensation of Section Foremen, as claimed by Brotherhood, or is an allowance added into the rate only for the employee who is actually performing the work of the foreman's position, as argued by Carrier. Carrier argues that its position is supported by the use of the word "the" in the phrase "the house rent allowance" in paragraph (d) of Rule 18. Rule 18 (b) and (d) read:

"(b) Where houses become untenable, or where houses are not furnished, line foremen will be allowed ten dollars (\$10.00) per month and Yard Foremen five dollars (\$5.00) per month in addition to regular monthly salary allowed when house is furnished.

(d) A Relief Foreman, while relieving a Foreman who is not furnished a house and who is paid an allowance in lieu thereof, will receive the house rent allowance during the time he performs such relief service."

The "the," argues Carrier, means that it is intended that Carrier be required to pay only one house rent allowance per position at a time. If the "the" refers to that allowance in the phrase of (d) immediately preceding it, Carrier's reading of the Agreement would appear to be correct. If, however, the "the" refers to the allowance provided in (b) of Rule 18, it would leave open the possible validity of Brotherhood's contention that the house rent

allowance attaches not only to the worked position, but also to the daily compensation of the employee regularly assigned to the position.

Since a resolution of this ambiguity in Rule 18 in favor of Brotherhood's construction is essential to establish the validity of the Claim, the burden is Brotherhood's to provide evidence to prove that the intention of Rule 18 is as it claims. The only material in the record bearing on this question are assertions by the parties about practice: in its Ex Parte Submission Carrier asserts that since the inception of the Vacation Agreement of December 17, 1941, "The vacationing foreman has never received a house rent allowance while on vacation"; in its rebuttal statement Brotherhood denies that this statement is factual. But nowhere in the record do we find that Brotherhood offered any evidence that the vacationing foremen did ever receive the house rent allowance while on vacation, nor do we find any evidence that the house rent allowance had ever been treated as part of the daily compensation of foremen for purposes of the Vacation Agreement. Thus Brotherhood failed to support its Claim with adequate proof.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.