Award No. 16350
Docket No. CL-16675

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, 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 System Committee of the Brotherhood (GL-6109) that:

1. Carrier violated the Clerks' Rules Agreement when it failed and refused to allow necessary traveling and other expenses to an employe not regularly assigned to Road Service who was assigned temporarily to perform service away from his headquarters.

2. Carrier shall now be required to compensate T. M. Bankey for the following expenses incurred while assigned to perform service away from his headquarters.

Date	Location	Meals	Lodging	Allowance Miles	Allowance Amount	Business Purpose	Total Expense	Travel Time
1965 10/30	Deer Lodge	3.25	1.00	430	30.10	Travel Miles City to Deer Lodge — Vac. Rel.	34.35	10 hrs.
10/31	Deer Lodge	5.10	1.00				6.10	
11/1	Deer Lodge	5.00	1.00				6.00	
11/2	Deer Lodge	4.55	1.00				5.55	
11/3	Deer Lodge	4.25	1.00				5.25	
11/4	Deer Lodge	4.90	1.00				5.90	
11/5	Deer Lodge	4.40	1.00				5.40	
11/6	Deer Lodge	4.80	1.00				5.80	
11/7	Deer Lodge	5.10	1.00				6.10	
11/8	Deer Lodge	4.15	1.00				5.15	
11/9	Deer Lodge	4.65	1.00				5.65	

Date	Location	Meals	Lodging	Allowance Miles	Allowance Amount	Business Purpose	Total Expense	Travel Time
11/10	Deer Lodge	5.00	1.00				6.00	
11/11	Deer Lodge & Billings	2.40		430	30.10	Travel Deer Lodge to Miles City & Ret Home Terminal	32.50	3'30"
11/15	Three Forks	3.25		325	22.75	Travel Miles City to Three Forks — Vac. Rel.	26.10	
11/16	Three Forks	4.00	3.50				7.50	
11/17	Three Forks	4.25	3.50				7.75	
11/18	Three Forks	4.50	3.50				8.00	
11/19	Three Forks	4.15	3.50				7.65	
11/20	Three Forks	4.50	3.50				8.00	
11/21	Three Forks	4.25	3.50				7.75	
11/22	Three Forks	4.35	3.50				7.85	
11/23	Three Forks	4.15	3.50				7.65	
11/24	Three Forks & Billings	2.50		325	22.75	Travel Three Forks to Miles City — Return Home Terminal	25.25	6'30"
	TOTAL.....	$97.55	$40.00	1,510	$105.70		$243.25	20 hrs.

EMPLOYES' STATEMENT OF FACTS: Employe T. M. Bankey, who has a seniority date in District No. 44 of August 8, 1945, is a furloughed or unassigned employe in that district. His home and headquarters are at Miles City, Montana and his location is shown on the seniority roster as "Miles City."

Under date of October 13, 1965, Superintendent W. F. Plattenberger addressed the following letter to employe Bankey:

> "This is to advise that we will have vacation relief at Deer Lodge for a period of three weeks starting October 25th, and also one week vacation relief for the Boardman at Three Forks starting November 15th.
>
> Will allow you your two weeks' vacation starting November 22nd, and it is my understanding there are three weeks left in December at Miles City which you could protect.

Deer Lodge, Montana	Three Forks, Montana
*	
10-31-65	11-15-65
11- 1-65	11-16-65
11- 2-65	11-17-65
11- 3-65	11-18-65
	11-19-65
11- 6-65	
11- 7-65	11-22-65
11- 8-65	11-23-65
11- 9-65	
11-10-65	

*Claimant Bankey was unable to reach Deer Lodge, Montana on October 30, 1965 in time to perform service on the rest day relief assignment on that date, and, therefore, did not commence the vacation relief until October 31, 1965.

Claimant T. M. Bankey was properly and fully paid for all service on and/or in connection with the vacation relief service he performed at Deer Lodge, Montana and at Three Forks, Montana.

Attached hereto as Carrier's Exhibits are copies of the following letters:

CARRIER'S EXHIBIT A – Letter written by Mr. S. W. Amour, Vice President, Labor Relations to General Chairman Mr. H. V. Gilligan, under date of March 8, 1966.

CARRIER'S EXHIBIT B – Letter written by Mr. S. W. Amour to Mr. H. C. Hopper, General Chairman under date of March 24, 1966.

CARRIER'S EXHIBIT C – Letter written by Mr. S. W. Amour to Mr. H. C. Hopper under date of June 17, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case is an unassigned, furloughed employe who lives in Miles City, Montana. He has a seniority date of August 8, 1945 in District No. 44, and on the seniority roster is listed, insofar as location is concerned, as "Miles City." He was called upon by the Carrier and did in fact perform vacation relief service at Deer Lodge, Montana from October 31 to November 10, 1965, and at Three Forks, Montana, from November 15 to November 23, 1965. He was compensated by the Carrier in the usual manner for services rendered, but demands additional compensation for meals, lodging, travel, etc., citing Rule 37(a) of the Agreement as a basis for his claim. This rule reads in pertinent part as follows:

"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, except where sleeping accommodations are furnished or are available, no additional compensation will be allowed unless actually required to perform services in excess of eight (8) consecutive hours, exclusive of the meal period. Actual service required of such employes in excess of eight (8) consecutive hours, exclusive of the meal period, will be paid for as provided in these rules."

The Organization contends that the language in the above cited rule is clear and unambiguous, i.e., that all employes not regularly assigned to road service, who are temporarily required to perform work away from their headquarters shall be allowed travel time and necessary expenses while away from their headquarters; that the Claimant is not an employe regularly assigned to road service, that he has no regular assignment, that he is a furloughed employe subject to recall for service at any point within his seniority district, that his headquarters is at Miles City, as evidenced by the fact that Carrier calls him at that point whenever his services are required, as well as by the fact that his location is shown on the seniority roster as "Miles City."

The Carrier's position in this matter is that Rule 37 (a) does not apply to furloughed or unassigned employes, that it applies only to regularly assigned employes and states **arguendo** that this is clear from the fact that "the opposite of employes not regularly assigned to road service," is "employes regularly assigned to road service" and not "extra or unassigned furloughed employes." The Carrier further submits that Rule 37 (a) has traditionally, historically and customarily been applied on this property only to regularly assigned employes not regularly assigned to road service, and that this has been a position consistently maintained by them since January 1, 1920. Carrier has shown in its Ex Parte Submission that the language of 37 (a) has been un-revised in several agreements dating back to 1920, and has therein stated categorically that both parties signatory to the Agreement have mutually recognized Carrier's interpretation to be correct, since, they allege, thousands of unassigned furloughed employes such as the Claimant, have travelled to various points to fill vacancies without claiming expenses under Rule 37 (a).

Carrier further avers that before an employe can justifiably request payment for expenses under the aforecited Rule, he must satisfy a condition **precedent**, and that is that he must have a headquarters before the Rule is applicable to him. They categorically state that unassigned, furloughed employes, such as Claimant, do not now nor have they ever had a headquarters.

We cannot agree with the principal contentions of the Carrier in its interpretation of the Rule. The term "employes" stands by itself; it is not qualified by the words "regularly assigned" or "unassigned" or "furloughed", or by any other restrictive description. Claimant in this case is an em-

ploye not regularly assigned to road service. By filing the instant claim, the Organization has presented a prima facie case that Carrier has violated the rule. Carrier thereupon defends on the basis of past practice, history, etc., mutual interpretation of the language over a protracted period of time, etc., but has failed to present any evidence sustaining such a position. To be sure, it is difficult to present negative evidence, and by this we mean that if Carrier is correct in its assertions that no claims have been submitted in thousands of cases similar to the instant one, how then can we demand such evidence? To establish such a mutually agreed upon practice could, it seems to us, be shown conclusively by the submission of appropriate affidavits to that effect from Carrier's own personnel. We find no such evidence in this record.

Practice and history can only come into play whenever the language of a contract is ambiguous and unclear. We find the language in Rule 37 (a) to be precisely the opposite, that is, that by giving the terms their ordinary, common meaning in the absence of substantial evidence to the contrary, Claimant comes within their purview. We, therefore, rule that as an unassigned, furloughed employe, the rule is applicable to the claim.

We are cognizant of and have analyzed very carefully the arguments propounded by Carrier with reference to the term "headquarters." We cannot find any place in the Agreement where that word is defined; hence again we must resort to the common, ordinary usage of that word. As pointed out in Award 5488 (Donaldson), Webster defines headquarters as "the center of operations and of authority." Claimant is listed on the seniority roster as "Miles City", and is contacted at that location by the Carrier for various assignments. We find this to be persuasive that "Miles City" is in fact his headquarters in the absence of any evidence in this record which would lead us to another conclusion. We, therefore, find that Rule 37 (a) is applicable and that Claimant is entitled to the compensation requested. We will sustain the claim as presented.

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

That the parties waived 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 24th day of May 1968.

CARRIER MEMBERS' DISSENT TO AWARD 16350, DOCKET CL-16675 (Referee McGovern)

The parties agree that an employe must have a headquarters under the agreement to bring himself within the purview of Rule 37 (a). Carrier takes that position and the Employes specifically claim that Claimant was working "away from his headquarters." (See the Statement of Claim.)

The controlling issue is whether an unassigned furloughed employe (the Claimant's status) has a headquarters. The Employes contend that the residence of such an employe is his headquarters, but submit no evidence and rely on Award 548, which ruled the furloughed employe's residence was not his headquarters under a similar rule.

Carrier contends that:

> ". . . unassigned furloughed employes do not now nor have they ever had a headquarters * * * **the Clerks' Organization cannot deny the practice** of over 46 years of applying the provisions of Rule 37(a) only to regularly assigned employes, . . ." (Emphasis ours.)

Apparently the Referee and Labor Members are convinced that the Clerks did deny the practice and demand proof thereof, for the Award states, in part:

> ". . . Carrier thereupon defends on the basis of past practice, history, etc., mutual interpretation of the language over a protracted period of time, etc., but has failed to present any evidence sustaining such a position. . . .
>
> * * * * *
>
> . . . Claimant is listed on the seniority roster as 'Miles City' and is contacted at that location by the Carrier for various assignments. We find this to be persuasive that 'Miles City' is in fact his headquarters **in the absence of any evidence in this record which would lead us to another conclusion.** We, therefore, find that Rule 37 (a) is applicable. . . ." (Emphasis ours.)

Certainly no one will deny that one of the permissible and reasonable interpretations of the word "headquarters" as used in Rule 37 (a) would be a headquarters assigned to an employe pursuant to the assignment rules of the agreement; therefore, if the parties have placed that interpretation on the word for a period of 46 years subsequent to adoption of the provisions of Rule 37 (a), as alleged by Carrier, such interpretation is now controlling on this Board. The authors of this Award appear to recognize that fact. As we understand their decision, it rests ultimately on the finding that Carrier must lose on this controlling point in the instant case because it failed to submit appropriate evidence proving the existence of the alleged practice.

As we read the record, the Employes did not deny the existence of the practice until the "Rebuttal Statement" which they submitted to this Board. That denial came too late, and the claim should have been denied on the basis that the Employes had impliedly admitted the existence of this controlling practice.

For these and other obvious reasons, we dissent.

G. L. Naylor
R. E. Black
W. B. Jones
P. C. Carter
G. C. White

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