



Award No. 16928  
Docket No. MW-17673

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John J. McGovern, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**SOUTHERN PACIFIC COMPANY**  
**(Pacific Lines)**

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

(1) The Carrier violated the Agreement when it failed and refused to allow Machine Operator Jose R. Trujillo per diem allowance of \$4.00 per day while filling the position of a Joint Straightener Operator on September 26, 27, 28, 29 and 30; October 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24 and 25, 1966. (System file MofW 46-126)

(2) Machine Operator Jose R. Trujillo be allowed the per diem allowance of \$4.00 per day for each of the aforementioned days because of the violation referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant Trujillo, whose position as operator of a Ballast Regulator had just been abolished, was instructed by Roadmaster Wisner to operate a Joint Straightener with Extra Gang No. 2 pending bulletin assignment of a regular operator. The claimant filled that position during the period extending from September 26 to September 30, 1966, inclusive, at which time the position was abolished and re-bulletined with Extra Gang No. 38. The claimant was again instructed to operate this machine pending assignment of a regular operator and did so during the period extending from October 3 to October 25, 1966. During the aforementioned periods, the Carrier provided the claimant with sleeping accommodations (house-trailer) but refused to allow him a per diem allowance of four dollars (\$4.00) per day to which he was entitled in accordance with the provisions of Rule 29.

On November 9, 1966, the claimant was assigned by bulletin to a position of Joint Straightener Operator with Extra Gang No. 9.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated July 1, 1964, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

Bulletin No. 28, dated September 19, 1966 (Carrier's Exhibit 2), gave notice that position of Rail Joint Straightener Operator on Extra Gang No. 9 was canceled before it was awarded and at the same time advertised other vacancies available for bid, including position of Rail Joint Straightener Operator on Extra Gang No. 2, headquarters assigned to trailers. Claimant again elected to withhold his right to displace and filed application for vacancies advertised on Bulletin No. 28 (Carrier's Exhibit 2), making his first choice for the Rail Joint Straightener Operator position on Extra Gang No. 2. Pending issuance of assignment notice, claimant filled the Rail Joint Straightener Operator position on Extra Gang No. 2 commencing September 16, 1966 (claim in this docket starts September 26, 1966), until that position was abolished on September 30, 1966. Bulletin No. 31, dated October 10, 1966 (Carrier's Exhibit 3), subsequently canceled that advertised vacancy without awarding assignment.

In the meantime, on October 3, 1966, still withholding his right to displace, claimant filled temporary vacancy of Rail Joint Straightener Operator on Extra Gang No. 38, which position was subsequently advertised for bid on Bulletin No. 33, dated October 24, 1966 (Carrier's Exhibit 4). Claimant filed an application for the advertised vacancy he was filling, but effective October 25, 1966, that position was abolished and advertisement notice was canceled without awarding assignment.

Claimant elected to continue protecting vacancies on positions of Rail Joint Straightener Operator pending advertisement and assignment; and by Bulletin No. 38, dated December 14, 1966, claimant was assigned to position of Joint Straightener Operator on Extra Gang No. 9.

3. Claimant filed two forms CS-148-Personal Expense Account (Carrier's Exhibit A) claiming \$4.00 per diem allowance each day service was performed between September 26 to 30, 1966, and between October 3 to 25, 1966, with a total expense of \$88.00 altogether. Carrier did not allow payment for such expenses submitted by claimant.

By letter dated November 28, 1966 (Carrier's Exhibit B), Petitioner's District Chairman submitted a claim to Carrier's Division Superintendent, contending claimant was entitled to receive the per diem allowance amounting to \$88.00 between September 26 to October 25, 1966, based on provisions of Rule 29(c) of the Current Agreement. By letter dated December 19, 1966 (Carrier's Exhibit C), Carrier's Division Superintendent denied the claim.

By letter dated December 21, 1966 (Carrier's Exhibit D), Petitioner's District Chairman gave notice that the claim would be appealed.

By letter dated January 25, 1967 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel; and by letter dated April 28, 1967 (Carrier's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant's position as operator of a Ballast Regulator was abolished, as a result of which he was assigned to operate a Joint Straightener with Extra Gang No. 2 pending bulletin assignment of a regular operator. He filled that position during the period extending from September 26 to September 30, 1966, inclusive, when that position was abolished.

and re-bulletined with Extra Gang No. 38. He was again assigned to operate this machine pending assignment of a regular operator and did so during the period October 3 to October 25, 1966. During the above mentioned periods, the Carrier provided the Claimant with sleeping accommodations (house trailer) but refused to allow him a per diem allowance of four dollars (\$4.00) per day. The claim is based on an alleged violation of Rule 29(c) which provides:

#### "RULE 29. EXPENSES

Per Diem - (c) An employe called to protect a position undergoing advertisement and assignment or a vacancy of thirty (30) calendar days or less duration under the provisions of Items (2), (3), or (4) of Rule 12, other than an employe in the gang or at same location used under these items shall be allowed a per diem of seven (\$7.00) dollars each day on which any service is performed in lieu of actual necessary expenses for meals and lodging; provided, however, that where sleeping accommodations are provided in accordance with Rule 37, the per diem allowance shall be four (\$4.00) dollars each day on which any service is performed."

The main thrust of Carrier's argument is that Claimant was not a regularly assigned employe, that is, did not hold a regularly assigned position on any of the dates of the claim and hence was not assigned to a designated headquarters location. Thus he could not have been held away from his headquarters over-night.

We are referred by the Organization to Rule 12 which in its entirety provides:

#### "RULE 12. VACANCIES

Positions undergoing advertisement and assignment or vacancies of thirty (30) calendar days or less duration that are to be filled shall be filled in the following order:

- (1) By the senior employe of the class in the gang or at the location who through force reduction is working in a lower class, or an employe in the gang or at the location who has qualified for the position in accordance with the provisions of Rule 8.
- (2) By calling in seniority order employes holding seniority in the class who through force reduction are working in a lower class or out of service, except that employes out of service due to force reduction will not be called for such vacancies if they have removed themselves from the eligible list as provided in Rule 13(d).
- (3) By calling in seniority order employes who have qualified in the class under the provisions of Rule 8 of this Agreement, but have not held an assignment in the class.
- (4) In the event the vacancy cannot be filled in accordance with the procedures set forth above, an employe of the sub-department may be transferred to fill such vacancy.

Employees filling vacancies under the provisions of Items (2), (3) and (4) of this rule, other than those in the gang or at the same location used under these items, shall be allowed travel time in accordance with Rule 30(a) and reimbursed for expenses incurred in accordance with Rule 29(c)."

We direct attention to sub section (2) quoted above. The contracting parties here have made provisions that "out of service" employees, obviously employees without a "designated headquarters" will be reimbursed in accordance with Rule 29(c). The term "employee" therefore is not restricted to only those in regularly assigned positions with designated headquarters. The intent of the contracting parties is clear. Claimant came within the provisions of Rule 12 and is entitled to per diem specified in Rule 29(c), since the language of the latter is clear, precise and unambiguous.

**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 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 violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.