

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22977
Docket Number **MW-22172**

Dana E. **Eischen**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of **Way** Employes
(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when Welder Helper E. A. White's claim for reimbursement of the mileage and **meal** expenses-he incurred on May 19, 20, 21, 22, 27, **28** and 29, 1975 was disallowed /System File 12-35 (76-14) **J3/C-4** (17) - **EAU**/

(2) As a consequence of the aforesaid violation, the Carrier **shall** now reimburse Claimant White for the meal expense (\$17.25) and mileage (\$105.60) incurred by him during **the** period from May 19, 1975 through May 29, 1975."

OPINION OF BOARD: Claimant, Welder Helper **E. A. White**, was regularly **assigned** as a Welder on Carrier's **Floating** Welding Force No. 9207, headquartered at Abbeville, South Carolina. A temporary position of Welder **Helper** on the Stationary Welding Force 8574 at **Rockmart**, Georgia, was advertised on March 28, 1975, with the bulletin period expiring on April 17, 1975. **Claimant** was the senior bidder for this position and **assignment** bulletin was issued on April 28, 1975, assigning the position to him effective May 12, 1975. Se requested to be on vacation the week of May 12 through 16 and was permitted to do so.

Thereafter, in accordance with Carrier's **instructions** to **continue** working as a Welder on **Welding** Force No. 9207 until bulletin could be posted and assignment **could** be made to get a replacement for **Claimant** ou the Welder's position, Claimant traveled in his personal automobile from the headquarters of Force No. 8574 at **Rockmart**, Georgia, to Abbeville, South **Carolina--** a distance of 220 miles. Se protected that position on May 19, 20, 21, and 22, 1975. On May 27, 28 and 29, 1975, **Claimant** was **again** required to work as a Welder with Force No. 9207. In fact, Claimant continued to work as a Welder in Force No. 9207 until Juue 23, 1975. At that **time**, another Welder was assigned to the Floating **Gang** and **Claimant** assumed his duties as a Welder Helper on the **Stationary** Gang at **Rockmart**. It is noted that Claimant was compensated as a Welder (the higher rate of the two positiona at issue) during **the entire time, May 19-June 23, 1975.**

On July 8, 1975 **Claimant** submitted on Forms 322 and 325 claim for expenses for the period of June 9 through **June** 17. On August 21, 1975 **Claimant** submitted claim for expenses for the period June 2, 1975 through June 5, 1975. Both claims were approved by Carrier. On August 25, 1975 **Claimant** submitted Forms 322 and 325 to Division Engineer **Low** requesting reimbursement for expenses incurred during the period **May** 19 through May 29, 1975. Carrier's Division Engineer declined payment of those claimed expenses in a letter dated September 11, 1975, on the basis that **Claimant** was being retained by Carrier on his **former** assignment (on the Floating Gang) and was not entitled to expenses as if he were assigned to Force 8594. The letter stated **in** part:

"It is **our** policy to retain an employee on his former position for a reasonable period of time pending the issuance of a bulletin advertising the job and the assignment of a replacement. The week that you were on vacation and the two weeks thereafter that you were held as a Welder on Force 9207, is definitely a reasonable **period** of time and, for that reason, you are not entitled to reimbursement for mileage or personal expenses. You previously claimed \$2.00 per day **Meal** Allowance for this period and were paid for **it.**"

A formal claim on behalf of **Claimant** was presented to Carrier on November 10, 1975. At this point it is important to note we find the claim was timely filed, despite Carrier's protestation to the contrary. We find no merit to Carrier's assertion that a "claim" for actual travel expenses constitutes a "**claim** or grievance" in accordance with **Rule** 40 of the Agreement. **The** occurrence precipitating the instant **grievance** was the September 11, 1975 denial of **Claimant's** request for reimbursement. This grievance was timely filed **under** Rule 40. Therefore, we find the present claim is not barred under the time limits of **Rule** 40.

The Organization argues that since **Claimant** was assigned to **Rockmart** as of May 12, he is entitled to expenses incurred as if he were headquartered there from May 12 forward. Carrier counters **that absent** contract limitation on the time within which an **employee** must be released to a new position, the rule of reason must apply. Carrier maintains that two weeks is a reasonable amount of **time** to retain an employee on his old position, and therefore, **Claimant** is not entitled to expenses incurred as if he were transferred. Carrier further asserts that approving **expenses** claimed from June 2 to June 23, does not constitute an **admission against** interest which consequently entitles **Claimant** to expenses incurred prior to that date.

We do not find persuasive the Organization's argument that Award 20861 is "foursquare" with the present issue. In the **former** case, the Claimant was required to **remain in** his old position at a lower rate of pay--after bidding into and being assigned to a higher paying position. Carrier was required by the Award to compensate the Claimant for the difference in pay received at the old position **and** what he would have received if allowed to occupy the new position at the **time of assignment**. By contrast, in the instant case, **Claimant** bid into a lower paying position, yet properly received the higher rate of pay the entire time he continued to occupy his old position at Carrier's request. Absent evidence on the record that Carrier had been reimbursing Claimant's travel **expenses** prior to his **assignment** to Stationary Force No. 8574, we do **not** find persuasive **the Organization's argument** that Claimant, by **continuing** to protect his old position as Welder suffered a loss from "out-of-pocket" expenses. **We find** that in the facts of this case two weeks was not an unreasonable period to hold **Claimant** in his old position. See Awards 3-5941, 3-13319, 3-19380. Further, acceptance of claims for expenses as if he were transferred to the new position from June 2 through June **23** does not obligate Carrier to do so **in** the first two weeks of protecting his old position. Accordingly, the claim **is** denied.

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 apprwed June 21, 1934;

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; and

That the Agreement was not violated.

A W A R D

claim denied.

NATIONAL RAILROAD ADJUSTMENT **BOARD**
By **Order** of Third Division

ATTEST: *AW.* & t & d & -
Executive Secretary

Dated at Chicago, **Illinois**, this 29th day of September 1980.