NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24678

THIRD DIVISION

Docket Number MW-24152

Irwin M. Lieberman. Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Missouri Pacific Railroad Company

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

(1)(a) The Agreement was violated when the Carrier failed and refused to allow B. L. Watts time for traveling between his home station (Mt. Vernon) and St. Elmo, Illinois on October 8, 9, 10, 15, 16, 17, 18, 22, 23, 24, 25, 26, 29 and 30, 1979

and

(b) the Agreement was further violated when the claimant was not paid mileage allowance for the use of his personal automobile therefor (Carrier's File § 214-115).

(2) As a consequence of the aforesaid violations, the claimant shall be allowed fifty-six (56) hours of pay at the extra gang foreman's time and one-half rate and a total mileage allowance of $260.40 11736 miles @ 15¢ per mile).

OPINION OF BOARD: Claimant herein was regularly assigned to a position as laborer in a gang with headquarters at Mt. Vernon, Illinois. The hack Foreman on a gang based at St. Elmo, Illinois was injured and his position was bulletined on October 11, 1979. During the hiatus it was necessary to fill the Track Foreman's position on a temporary basis in accordance with Rule 25 (d). No Foremen were available for the assignment and all Assistant Track Foremen senior to Claimant herein refused the assignment. Claimant, as the junior qualified employe (having held seniority as an Assistant Track Foreman) was required to fill the temporary vacancy. Claimant filled the vacancy for the days indicated in the Claim and elected to drive to and from his assignment on a daily basis. His claim for time and one-half for the travel time involved and mileage for using his personal car constitute the claim herein.

The crux of this dispute, since the Rules involved are clear, is the fact of what Claimant was told with respect to the assignment and his intention of driving each day. The record is singularly devoid of real evidence on this score. According to the General Chairman (in his letter dated March 2, 1980) Claimant was told by the Roadmaster that it was alright for him to use his personal vehicle and travel to and from the temporary assignment on a daily basis. The record does not indicate anything directly from Claimant on this subject and the time and circumstances of the alleged conversation are unknown. The Carrier, on the other hand, in a letter from the Superintendent dated January 3, 1980 states that Claimant was "advised" that he would be paid for traveling to the assignment at its beginning and at the conclusion of the assignment and would receive mileage for that round trip as well. There is absolutely no indication of the circumstances of the "advised" conversation or instruction, and no evidence concerning it directly. The Board views the circumstances as confused and conflicting since both parties were remiss in their presentation of evidence. It is impossible for this Board to resolve the factual discrepancy apparent in the two positions. For that reason the Claim must be dismissed.

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 Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984