NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25566

THIRD DIVISION

Docket Number MW-25501

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western 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 Trackmen M. D. Church, N.P. Digesualdo and C. C. Lopez time for traveling between their headquarters point (Rifle, Colorado) and Glenwood. Colorado beginning July 16, 1982

and

(b) The Agreement was further violated when the claimants were not paid mileage allowance for the use of their personal automobiles therefor (System File D-34-82/MW-19-82).

(2) As a consequence of the aforesaid violations Messrs. Church, Digesualdo and Lopez shall each be allowed two (2) hours and eight (8) minutes of pay at their respective rates and mileage allowance (64 miles @ 19¢ per mile) for each day they worked at Glenwood beginning July 16, 1982 and continuing until the violation is terminated.

OPINION OF BOARD: In this claim the Organization asks that three trackmen be compensated for mileage costs and travel time between Rifle, Colorado and Glenwood, Colorado, a distance of approximately 30 miles. The Organization contends that the Claimants were required by the direction of the Carrier to move their headquarters to Glenwood. By not furnishing them with free transportation or paying them for their transportation, the Organization claims that the Carrier has violated Rule 22(a) and (d) which state:

> "Traveling from Headquarters Point--(a). Employes other than those covered by subsections (b) and (c) of this Rule 22 who are required by direction of the Company to leave their home station or headquarters point will be allowed actual time for traveling or waiting during regular working hours. All hours worked will be paid for in accordance with the practice at the home station or headquarters point. Travel and waiting time outside regular working hours and on rest days and holidays will be paid for at the pro rata rates.
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> "Employes will not be allowed time while traveling in the exercise of seniority rights or between their homes and home stations or headquarters points or for other personal reasons.

"Transportation from Headquarters Point--(d). An employe covered by subsections (a) or (b) of this rule required to be away from his home station or headquarters point shall be furnished with free transportation by the Company in traveling from his home station or headquarters point to another point, and return, or from one point to another. If such transportation is not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines, or the cost of other public transportation used in making the trip, or if he has an automobile which he is willing to use and the Company authorizes him to use said automobile, he will be paid an allowance of nineteen (19¢) cents for each mile in traveling from his home station or headquarters point to the work point, and return, or from one work point to another.*

The Organization denies the Carrier's contention that the Claimants accepted this transfer voluntarily to avoid layoff. The Organization also rejects the contention that the letter from the Claimants to the Division Engineer, dated August 30, 1982, makes the claim by the Organization invalid. This letter states:

"Please be informed that this claim has been filed without our knowledge or permission and we are quite satisfied with the arrangement we have with Roadmaster Aragon. It is our desire that this claim be withdrawn.

Would you so advise Mr. Ochoa."

The Organization cites several Awards to show that an individual does not have the riqht to agree to an arrangement that is contrary to the terms of the Agreement.

The Carrier maintains that the Claimants were notified by the Roadmaster that due to a reduction in the Rifle Section work load, they would be laid off. The Roadmaster informed them that there was work available at Glenwood. The Carrier contends that the Claimants voluntarily accepted the duty at Glenwood in lieu of furlough. The Carrier denies that any violation of the Agreement occurred because the Claimants were exercising their seniority rights in going to Glenwood, and under Rule 22(a) the Carrier is not required to provide transportation or compensation for travel time. The Carrier maintains that the Claimants had the right to withdraw the claim that was filed by the Organization and that they did so by their letter to the Division Engineer.

Under the circumstances presented in this particular case, the Board finds that the Organization was entitled to pursue this claim despite the letter from the Claimants to the Division Engineer. It is well-established in numerous Awards that individuals may not enter into side Agreements. As stated in Third Division Award No. 4461:

"The Organization has the authority to police the Agreement. It is authorized to correct violations and to see that the Agreement is carried out in accordance with its terms. In so doing, it acts on behalf of all the employes who are members of the Organization. Individual members are not permitted to contract with the Carrier contrary to the provisions of the collective agreement and thereby make the collective agreement nugatory. Neither can such a result be secured by indirect action. The Carrier will not be permitted to protect itself against its own violations of the Agreement by securing waivers, disclaimers, releases, or other formal documents having the effect of excusing its contract violations. Such methods, carried to the extreme, would ultimately result in the destruction of the collective Agreement. We quote with approval from Award 2602 on this point:

> 'It appears, however, that no less an authority then the Supreme Court of the United States, had declared in the case of The Order of Railroad Telegraphers v. Railway Express Co. (No. 343, decided February 28, 1944) that where collective bargaining agreements exist their terms cannot be superseded or varied by special voluntary individual contracts, even though a relatively few employes are affected and these are specially and uniquely situated.'"

However, after a careful review of the record, the Board finds that the Organization presented no evidence which proves that Rule 22 of the Agreement was violated by the Carrier. The Claimants were told of the opportunity to work at Glenwood, and they voluntarily exercised their seniority rights and accepted the work available there. There is no evidence beyond the Organization's repeated assertion that the Employes were transferred to Glenwood at the direction of the Carrier. Had the Claimants remained at Rifle, they would have been furloughed. Under the circumstances in this case, the Carrier did not violate the Agreement.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.