

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26285
Docket Number MW-25639

John B. LaRocco, Referee

(Brotherhood of Maintenance of Way **Employes**

PARTIES TO DISPUTE: (

(Detroit, Toledo and **Ironton** Railroad Company

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

(1) The Carrier violated the Agreement when it refused to allow Machine Operator S. K. Pollock actual necessary expenses (\$170.84) for September 7, 8, 9, 13, 14, 15 and 16, 1982 (Carrier's File 8365-1-145).

(2) Machine Operator S. K. Pollock shall be reimbursed for the actual necessary expenses (5170.84) he incurred on the claim dates mentioned in Part (1) hereof."

OPINION OF BOARD: On July 7, 1982, the Carrier awarded Claimant a First Class Geismer Tie Inserter Operator position on Section Gang 12 which was headquartered at Springfield, Ohio. While occupying the position, Claimant did not assert a right to receive reimbursement for meal and lodging expenses. The Carrier abolished Claimant's position effective August 31, 1982. Claimant bid on and was awarded a newly established Tie Inserter Operator position on Section Gang 10 at Lima, Ohio. Apparently, Claimant operated the same machine that he had used on Section Gang 12. Claimant sought reimbursement in the amount of \$170.84 which he expended for actual necessary meal and lodging expenses during the period from September 7, 1982 to September 16, 1982. The Carrier declined the claim.

While the Organization does not challenge the Carrier's prerogative to move its equipment, it contends that the Carrier, in effect, assigned Claimant to operate the Tie Inserter over a large geographical area encompassing more than one Section Gang territory. The Organization charges the Carrier with trying to escape liability for meal and lodging expense reimbursements through the subterfuge of periodically changing headquarter points as tie renewal work progressed across the system. Rule 39(b) entitled Claimant to receive actual necessary expenses since the Carrier furnished neither a camp car outfit nor cooking facilities. According to the Organization, Rule 39 evolved from the Award of Arbitration Board No. 298. In Interpretation No. 8, the Board ruled that the Carrier could properly avoid paying for meal and lodging expenses if a gang was assigned to a fixed location which remained unchanged throughout the year. In this case, the Carrier seeks to evade Rule 39(b) by discontinuing Claimant's Springfield position and instituting the identical position at Lima. The Organization concludes that the Carrier simply but improperly changed the headquarters point for the Tie Inserter operator.

The Carrier emphasizes that unlike System Extra Gangs, Section Gangs 10 and 23 had fixed headquarters and performed work on a defined, stationary territory. Claimant was not assigned to a System Extra Gang and thus, the Carrier avers that Rule 39 is inapplicable. While stationed at Lima, Claimant's work covered only the Section 12 territory. The Carrier contends that Claimant voluntarily bid on the Lima Machine Operator position knowing that he was not entitled to reimbursement for lodging and meal expenditures because he had not claimed such expenses when he held a position on Section Gang 10 which also had a fixed headquarters point.

The Organization bears the burden of proving that the Carrier violated Rule 39(b). For two reasons, this Board finds that the Organization failed to satisfy its burden of proof. First, by his own volition, Claimant bid on a new Tie Inserter position established on Section Gang 10 fully aware that the assignment worked from a fixed headquarters point. When he had previously worked on Section Gang 12, also with fixed headquarters, Claimant similarly realized that he lacked an entitlement to meal and lodging expenses. Second, Interpretation No. 8 to the Award of Arbitration Board No. 298 applies solely to System Gangs. On the claim dates, Claimant held a position on a local Section Gang.

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;

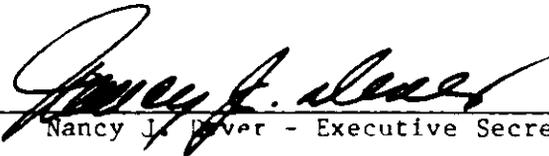
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.