

## NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29643  
Docket No. MW-28015  
93-3-87-3-569

The Third Division consisted of the regular member and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(CSX Transportation Inc. (former Seaboard System Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier refused to compensate Bridge Tender B. P. Piatt for the expenses he incurred performing relief bridge tender duties October through December, 1984, January through September, 1985, November and December, 1985 [System Files BPP-9/12-8(85-172) E; BPP-85-34/12-36(85-267) E; BPP-85-60/12-36(85-312) I; BPP-85-79/12-36(86-14) and BPP-86-4/12-35(86-115) I].
- (2) The Claimant shall be reimbursed for expenses incurred on October 31, November 1, 2, 3, 5, 6, 7, 8, 20, 28, 1984, in the amount of \$520.90 to be paid with interest in accordance with the appropriate interest rate in effect October, 1984 and the position of relief bridge tender shall be bulletined on the Tampa Division.
- (3) The Claimant shall be reimbursed for expenses incurred on November and December, 1984, and on January through September, 1985, November and December, 1985, in the amount of \$6526.35 with interest accrued in accordance with the appreciated interest rate in effect at the time of settlement."

FINDINGS:

Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance thereon.

At the time this dispute arose, Claimant held seniority as a Bridge Tender in the Maintenance of Way Subdepartment and was in a furloughed status. On dates set forth in the claims and as reflected by Claimant's expense reports, Claimant worked vacancies as a Bridge Tender at various locations.

Specifically, the Organization asserts in the five presented claims that Claimant worked in a relief capacity on (a) October 31, November 1, 2, 3, 5, 7, 8, 20 and 28, 1984; ;(b) November 25, December 1, 7, 11, 25, 28, 1984, January 16, 21, 25, 28, February 1, 3, 7, March 4, 8, 16, 20, 23, 27, 1985; (c) April 15, 19, 29, 30, May 1, 2, 3, 6, 7, 8, 9, 17, 19, 21, June 3, 4, 5, 6, 7, 10, 11, 13, 14, 17, 18, 19, 20, 21, July 1, 5, 8, 12, 1985; (d) July 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 29, August 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, September 8, 9, 10, 11, 12, 1985; (e) November 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, December 6, 7, 8, 9, and 10, 1985.

These claims seek expenses incurred by Claimant from working those vacancies.

The relevant Rules provide as follows:

" RULE 8  
BULLETINING VACANCIES AND NEW POSITIONS

Section 1

- (a) All vacancies and new positions, temporary or permanent, that are expected to last more than thirty (30) calendar days, will be bulletined.

Section 2

Vacancies of seven (7) calendar days, or less, may be filled using any eligible employee of the group and seniority district; however, preference will first be given to employees of the rank in which the vacancy exists who may be out of work or working in a lower rank account reduction of forces.

\* \* \*

Section 3

All temporary vacancies of more than seven (7) calendar days and less than thirty-one (31) calendar days' duration will be filled as follows:

First, by using the senior employee of the rank and group on the district who has seniority in the rank in which the vacancy occurs, who may be out of work or working in a lower rank account reduction of forces.

Second, if no such employee is available, the vacancy will be filled through the general promotion rules.

\* \* \*

RULE 35  
TRAVEL TIME

Section 1

The Carrier shall designate a headquarters point for each regular position and for employees not serving in regular positions the Carrier shall designate a headquarters points for each employee.

\* \* \*

Section 4

Employees will not be allowed compensation while traveling in the exercise of seniority rights, between their homes and designated assembling points, or for other personal reasons.

\* \* \*

RULE 36  
TRAVEL EXPENSES

Section 1

Employees will be reimbursed for necessary actual expenses incurred while away from

their regular headquarters by direction of the Management, whether off or on their assigned territory. This Rule will not apply to employees traveling in exercise of their seniority rights nor to employees customarily carrying lunches and not being held away from their assigned territory an unreasonable time beyond the evening meal hours as provided in Rule 25."

\* \* \*

The clear language of the Rules governs the specific facts in these claims. Given the dates for which the individual claims were made and the pattern of work reflected by the dates worked, we are unable to find that the specific vacancies worked by Claimant were "expected to last more than thirty (30) calendar days" under Rule 8, Section 1(a) requiring that the vacancies be bulletined. There is insufficient basis for us to conclude as the Organization argues that the filling of the vacancies in this case must be looked at in its entirety as one act or that the circumstances demonstrate that the Carrier established a new position of Relief Bridge Tender that had to be bulletined. Claimant was filling individual vacancies through the exercise of his seniority. Therefore, the requirements under Rule 35, Section 1 that "the Carrier shall designate a headquarters point for each regular position and for employees not serving in regular positions Carrier shall designate a headquarters point for each employee" do not apply.

The record sufficiently demonstrates that Claimant worked the vacancies in question under Rule 8, Sections 2 and 3 and did so by exercising his seniority rights. Rule 35, Section 4 excludes entitlement to compensation for "traveling in the exercise of seniority rights, between their home and designated assembly points." Rule 36 is similarly qualified by Section 1 of that Rule excluding entitlement to expenses in situations where the employees are "traveling in exercise of their seniority rights." Those exceptions apply to these claims. The large number of dates worked by Claimant was purely a function of Claimant exercising his seniority rights to individual vacancies of less than 30 days.

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We therefore conclude that the Organization has not carried its burden of demonstrating a Rule violation in these specific cases. The claims must therefore be denied. See Third Division Awards 26849, 26359, 26223.

Given the clarity of the Rules, the fact that the Carrier made some payments to Claimant in the past for similar claims does not dictate a different result.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993