

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36290
Docket No. MW-35656
02-3-99-3-584

The Third Division consisted of the regular members and in addition Referee Richard Mittenthal when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) This Agreement was violated when the Carrier directed Messrs. T. Burke, M. Steuernagel and P. Valiquette to work away from their assigned positions and failed and refused to reimburse them for expenses incurred thereto. (System File C-03-98-C120-01/8-00344 CMP)
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Burke shall now receive one thousand eight hundred forty two dollars and thirty cents (\$1,842.30), Claimant M. Steuernagel shall now receive five hundred thirteen dollars (\$513.00) and Claimant P. Valiquette shall now receive two thousand seven hundred thirty seven dollars and fifty cents (\$2,737.50.)”

FINDINGS:

The 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 were given due notice of hearing thereon.

Three employees are covered by this case. Their claims pose the same problem. In order to avoid overburdening this Award with unnecessary factual detail, Burke's situation will be used to illustrate the issue.

Burke was hired on September 8, 1997, as a Section Laborer headquartered in Milwaukee, Wisconsin. After a one-week orientation period, he was assigned to work with a crew at Glendale in Milwaukee under the direction of Roadmaster P. Poeschel. A short time later, he bid for a Section Laborer opening on a crew headquartered in Hastings, Minnesota. He was awarded that opening on October 21, 1997. However, because of a manpower shortage in Milwaukee, Poeschel refused to release Burke to his new position at the Hastings headquarters. Burke was retained as a Section Laborer in Milwaukee and in Wadsworth, Illinois, also part of the Milwaukee headquarters area. He was not released until January 2, 1998. By then, however, his position at the Hastings headquarters had been terminated on account of the return of a permanent incumbent to a Section Laborer position at Hastings. He was then placed on furlough.

Burke resides in Westby, Wisconsin, some 161 miles from the Hastings, Minnesota, headquarters. He had to drive weekly 205 miles to Milwaukee or 247 miles to Wadsworth. He sought and was denied payment for out-of-pocket expenses for meals, lodging and mileage.

The Organization relies on Rule 27 which provides for reimbursing "regularly assigned employees" for their "travel time and expenses" when they "are required . . . to be away from their headquarters point as designated by the Carrier" and "are unable to return to their headquarters point. . . ." It argues that Management refused to release Burke to his bid position and thereby "required [him] to be away from [his Hastings] headquarters point." It believes this was a violation of Rule 27 for which Burke was entitled to "travel time and expenses." The Carrier disagrees. It insists that Management had a right to refuse to release Burke to his Hastings bid position, that this right is expressly set forth in Rule 8(e), that Burke never worked this particular bid position, that he knew he had been hired for Milwaukee crew work, that Milwaukee was his "headquarters point" throughout the period in question, and that

therefore he was never "required . . . to be away from [his] headquarters point as designated by the Carrier." It believes Rule 27 was not applicable in these circumstances.

A close reading of Rule 27 does not offer a clear answer to this disagreement. For nowhere does Rule 27 specifically address the question of when exactly an employee assumes a new "headquarters point." According to the Organization, Burke had a Hastings "headquarters point" as soon as his bid was accepted on October 21, 1997 (or at most ten days thereafter). According to the Carrier, he continued to have a Milwaukee "headquarters point" between late October 1997 and early January 1998 because he had not been released from his Milwaukee position. Neither of these arguments is unreasonable on its face.

This ambiguity must be resolved in the Carrier's favor because of Rule 8(e), mentioned earlier. That Rule reads in part:

"An employee assigned to a position on bulletin . . . must accept the position and perform service thereon within ten (10) calendar days from the date of assignment or forfeit his rights to the position.

NOTE: In the application of Rule 8(e) in a case where the supervisor fails to release the employee sufficient to permit him assuming work to which he is assigned within a period of ten (10) calendar days . . . , the ten (10) calendar day period will be extended sufficient to include the delay, with the understanding that when the employee is released, he will then proceed to his new position without further delay." (Emphasis added)

A successful bidder, under Rule 8(e), must not only "accept the [bid] position" but must also "perform service thereon" before his movement to the new position can be said to have been consummated. Burke did not become a Section Laborer at the Hastings "headquarters point" because he did not "perform service thereon." The Carrier chose not to release him from his Milwaukee position because of a manpower shortage. It had a right to do so under Rule 8(e) and nothing in the record suggests that the Carrier was arbitrary or capricious in acting as it did. Indeed, Rule 27 itself speaks of the "headquarters point" for an employee being "designated by the Carrier. . . ." Notwithstanding the fact that Burke had bid into a position in Hastings, the Carrier understandably "designated" Milwaukee as his "headquarters point" until such time

as he could be released from his Milwaukee position. And at such time as he was released, he "will then proceed . . ." to his new position and "headquarters point."

For these reasons, the ruling must be that Burke had not achieved a Hastings "headquarters point" between October 1997 and early January 1998. Because he still had a Milwaukee "headquarters point" during this period, he was not "required . . . to be away from [his] headquarters point." Rule 27 was not applicable. The Organization construes Rule 27 in such a way as to impose a money penalty on the Carrier for exercising its Rule 8(e) right in good faith. The language of Rules 8(e) and 27, read together, will not support such an interpretation. These findings dispose of the similar claims made by Steuernagel and Valiquette as well.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 28th day of October 2002.