Award No. 935
Docket No. SG-945

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE TEXAS & PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "That T. L. McCall be reimbursed for actual necessary expenses to the amount of $60.50 incurred during period of time (June 28 to July 31, 1938, inclusive) required by direction of the management to be away from his regular assigned home station filling a temporary assignment of relieving a signal maintainer at Plaquemine, La."

EMPLOYES' STATEMENT OF FACTS: "T. L. McCall holds a regular assignment as battery repairman in the signal department, Texas and Pacific Railway Co.

"His home station, as referred to in Rule 4 of the agreement between the Brotherhood and the Carrier, is a combination camp-battery car, one end of car being equipped as living quarters, while the other end of the car is equipped as a work shop.

"On June 27, 1938, while McCall was overhauling this camp-battery car (his headquarters), he was instructed by his superior to go to Plaquemine, La., to temporarily fill the position of signal maintainer, with headquarters at that point, which was vacant because of the employe who had been assigned to that position being taken out of service.

"At the time McCall was instructed to go to Plaquemine, he was advised that it would be for a period of three or four days. However, he was not relieved from that temporary service and permitted to return to his regular assigned position and headquarters until July 31, 1938.

"Rule 4, which provides for allowance for expense when away from camp car, reads as follows:

> 'An hourly rated employe sent away from the point where employed shall be paid from the time he reports for duty and will be allowed straight time for work performed during regularly assigned hours, and time and one-half for work performed in excess thereof, he will be allowed straight time while traveling and waiting, except he will not be allowed time when four or more hours for rest and sleeping accommodations are available.
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> '(b) Employes shall notify their foremen or immediate superior officer when they have finished work at point to which sent and shall return by first means of transportation afforded by the Railway.
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> '(c) Actual NECESSARY expenses will be allowed if boarding cars to which employe is assigned are not available.'

"Rule 22 (b), which sets up the monthly rates for maintainers and road service employes, reads:

"The intent of Rule 4 was to take care of the actual necessary expenses of an hourly rated employe sent from the point at which employed, which is usually at a point where the employes live in outfit cars, and who may be detained at the point he is working long enough to make it necessary for him to pay for meals or perhaps a night's lodging. Paragraph (b) of Rule 4 makes the intent of the rule very clear.

"Rule 7 reads as follows:

'RULE 7.

'Transfers.

'(a) Employes transferred by direction of the Management will be paid for time lost and will be allowed actual NECESSARY traveling expenses.

'(b) They will be allowed free transportation for dependent members of their family and for their household effects when not in violation of the law.

'(c) Employes moved in outfit cars by direction of the Management will be paid for all time lost.'

"It is the opinion of the Carrier that the above rule is applicable in the case at issue. McCall was transferred from a point at which the hourly rate applied to a point where the regular monthly salary applied and to a position on which his monthly salary was based on seven 8-hour days per week, even though there was not that much work for him to do.

"McCall was not an hourly rated employe after he arrived at Plaquemine and was placed on the position carrying a monthly rate. The hourly rated job he was on at Marshall was abolished during the period he was away from there.

"The Board will note that Rule 7 is captioned, 'TRANSFERS,' and manifestly Rule 7 is the proper one to apply in this case. It will be noted that in transferring an employe the rule provides a guarantee against a loss in time and provides for actual necessary traveling expenses. McCall was paid in accordance with this rule.

"The Board will understand that McCall was not assigned and living on camp or boarding cars at Marshall when his headquarters or point of employment was changed from Marshall to Plaquemine and later to Melville. There is no rule obligating the Carrier to furnish camp cars. Rule 62 merely provides that when furnished they will be maintained in a clean and sanitary condition, etc. Please be referred to your Board's Award 178 denying a claim on the Baltimore & Ohio Railroad, similar principles involved.

"It is affirmed that all data submitted herein in support of our position has been heretofore presented to the Organization and is hereby made a part of the question in dispute."

There is in existence an agreement between the parties bearing effective date of January 1st, 1930.

OPINION OF BOARD: The question here involved is whether Rule 4 or Rule 7 is applicable to the facts in this case. Both of these rules are quoted in the position of the Carrier immediately preceding this Opinion. The facts are not in dispute.

The claimant was in unassigned road service and at the time was engaged in preparing a car in Marshall, Texas, to be used on the line as a battery car, and to have sleeping accommodations therein for himself. The sleeping accommodations had not been installed and in the situation the car could not properly be called an outfit or boarding car.

On June 27, 1938 he was temporarily relieved from this occupation and sent to Plaquemine to relieve the maintainer at that point. On August 6 he

was relieved by a senior man and sent to Melville to relieve the maintainer there, where he stayed until August 11 and then returned to his job at Marshall and continued the work of equipping the car. At the time he was sent to Plaquemine he was advised that it would be for a period of three or four days.

The Carrier makes two contentions: (1) That Rule 4-(c) provides for the allowance of expenses on temporary assignments away from the point where employed only if the employe was located in a boarding car at the point from which sent and not furnished one at the point to which temporarily assigned; (2) That what occurred here was not governed by Rule 4 at all, but constituted a transfer within the meaning of Rule 7.

We do not think that Rule 7 has any bearing on the matter. What occurred here in no sense could be termed a transfer. The employe was told he would only be gone three or four days and it would be ridiculous to suppose that he would ask for transfer of his household goods, etc. for such an assignment. That the assignment continued longer than that was no fault of his.

As to the other contention. The language of Rule 4-(c) is far from clear. If the Carrier's construction was put on it, i.e., that the employe was located in a boarding car at the point from which sent; then a literal reading of it would require that that particular car had to be moved to the point to which sent; that one there would not do. This would be an absurd application of the rule. We are inclined to take the view expressed by Assistant General Manager Tobin in his letter of August 22, 1938, quoted at the outset of the Carrier's position, insofar as he states that the rule in its entirety contemplates a man in unassigned road service who, by proper authority, is sent to a point away from boarding car, **or the regular point at which the man got his meals and lodging.** With this view of the rule, if the man is furnished a boarding car at the point to which sent, he is not entitled to expenses. If he is not furnished a boarding car there, then he is entitled to expenses. Such would seem to be the only reasonable intent of the rule.

The fact that, in this instance, the employe relieved a regular monthly rated employe makes no difference. Had the assignment lasted only three or four days as originally contemplated, no one would have suggested the applicability of Rule 7.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 expenses incurred by Signalman McCall while filling the temporary positions as maintainer at both Plaquemine and Melville should have been paid by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1939.