Award No. 957
Docket No. MW-963

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Messrs. Paul Hauge and Arthur Ryding that they be reimbursed in the amount of $20.05 and $13.83, respectively, for expenses incurred while assigned as operators of clam shell X-1779 at Casselton, N. D. during the last half of February, 1938."

JOINT STATEMENT OF FACTS: "On February 15th, 1938, General Roadmaster R. S. Kniffen, posted Bulletin No. 41 advertising for two operators on Derrick No. 1779 that had been put in service at Casselton, North Dakota, coaling engines with clam shell attachment, for an indefinite period of more than thirty days.

"Pending assignment on this bulletin, Messrs. Paul Hauge and Arthur Ryding were instructed to report at Casselton to operate the X-1779."

POSITION OF EMPLOYES: "The principal question in dispute and to be determined, is whether Casselton was the regular headquarters of machine operators Paul Hauge and Arthur Ryding, while temporarily operating the derrick, pending assignment of regular operators on bulletin.

"Positions of machine operators are subject to bulletin. Their regular headquarters are established by bulletin. When they bid on and are assigned, through bulletin, to the operation of a machine, the town named in the bulletin becomes their regular headquarters.

"One of the schedule rules governing bulletining of positions, Rule 24, reads in part:

> 'When it is known fifteen (15) days in advance that a new position is to be established, or that a vacancy of thirty (30) days or more is to be open, such position or vacancy will be bulletined at once.'

"On February 14th, 1938, the Carrier put Derrick X-1779 into service at Casselton to coal locomotives. We do not know whether the Carrier knew in advance that this service was to be started on February 14th. At any rate on February 15th the Carrier posted bulletin for two regular operators to operate this derrick, one for day service and one for night service. Under the rules, it takes at least ten days to make assignments under a bulletin. In the meantime, pending assignments of regular operators to operate this derrick, the Carrier had to have two competent operators to take care of the service, and so it reached out and took Paul Hauge, who was employed as a truck driver at Minot, and Arthur Ryding, whose seniority rights permitted

whether off or on their assigned territory (except as limited in Section (b)). This rule not to apply to midday lunch customarily carried by employes, nor to employes traveling in exercise of seniority rights.' Rule 53 (b) there referred to reads 'Derrick and pile driver operators and similar specialized employes of the Machine Operation Department, the character of whose service necessitates their assignment to work at various points or with various crews, will not be reimbursed for cost of lodging and meals when working continuously for six (6) days or more at a point where there is a regular B. & B. outfit at which they can secure their meals (and lodging if necessary), at the regular weekly rate charged employes attached to such outfit.'

"In this particular case, the character of the work did not necessitate any requirement to work at various points nor with various crews; in fact, the bulletin specified that the work was to be at one point only, and the work actually was performed at one point only. Rule 53 (b) therefore has no application in this case.

"Rule 53 (a) provides for payment of expenses only 'while away from their regular outfits or regular headquarters by direction of the management etc.' No service away from the regular headquarters was required, and the location of the regular headquarters was specified by the bulletin. Rule 53 (a) therefore has no application in this case, as a regular headquarters was specified and all work was performed thereat.

"The Carrier's Position is that (1) both Hauge and Ryding were the senior unassigned Machine Operators on February 15th and were properly used to fill a bulletin position; (2) being unassigned at that time, their use at Casselton did not result in their being taken away from any regular headquarters; (3) the bulletin specified the headquarters for the Casselton work, and while on such work claimants were not required to leave such regular headquarters. By every application of the schedule rules to the circumstances in each case, therefore, expense allowances were not applicable, and the Carrier requests that this Board so hold."

OPINION OF BOARD: The facts in this case are not in dispute. Bulletin No. 41 posted February 15, 1938 advertised two operator positions on derrick, with clam shell attached, at Casselton, N. D., to coal engines for an indefinite period. Pending assignments on this bulletin, Paul Hauge and Arthur Ryding, the claimants here, were directed by Carrier to report at Casselton to operate the derrick. The claim is for reimbursement for expenses incurred while assigned to operate the derrick pending assignment under the bulletin. The claim is predicated on Rule 53 (a) and (b) which reads as follows:

> "(a) Employes will be reimbursed for cost of meals and lodgings incurred while away from their regular outfits or regular headquarters by direction of the Management, whether off or on their assigned territory (except as limited in Section (b)). This rule not to apply to midday lunch customarily carried by employes, nor to employes traveling in exercise of their seniority rights.
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> "(b) Derrick and pile driver operators and similar specialized employes of the machine operation department, the character of whose services necessitates their assignment to work at various points or with various crews, will not be reimbursed for cost of lodging and meals when working continuously for six (6) days or more at a point where there is a regular B. & B. outfit at which they can secure their meals (and lodging if necessary), at the regular weekly rate charged employes attached to such outfit."

Carrier contends that each employe was unassigned when he was directed to report at Casselton and operate the derrick pending assignments under the bulletin, and for that reason Carrier is not liable for the expenses of these employes while on the temporary assignment.

The record shows that Hauge held a position as Truck Driver with a B. & B. crew but that the truck was not in service at the time and Carrier claims that Hauge was improperly permitted to perform other work. While Ryding held seniority as a machine operator he also held seniority in the Track Department and had been relieving the section foreman at Des Lacs, N. D. The regular section foreman returned to his position on the day Ryding was instructed to report at Casselton. Carrier contends that these employes being unassigned could not exercise seniority anywhere except on the positions they were directed to protect (see Rule 4 (a)) and for that reason are not entitled to their expenses.

While Hauge was not in fact technically or otherwise unassigned on the day he was directed to protect the temporary position at Casselton, in the opinion of the Board that fact is unimportant in this case. Assuming that each employe was unassigned Carrier did not have the right under the agreement to direct them to protect the positions in question **at their expense.** Each was privileged to delay exercising his seniority right until he could use it on a position he desired to fill, and there is nothing in this record to show that the employes involved were traveling in the exercise of their seniority rights. While the Carrier had the right to direct each employe to protect the temporary assignment in question when it did so it became obligated under the agreement to reimburse said employes for their expenses while away from their regular headquarters or home.

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 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 upon the facts shown in this case the employes in question were entitled to their expenses.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1939.