

Award No. 2862

Docket No. MW-2849

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Sam Mathis, weed mowing machine operator, be reimbursed for expenses incurred for meals during the month of September, 1942, in the amount of \$19.65, and during the month of October, 1942, in the amount of \$6.85.

EMPLOYEES' STATEMENT OF FACTS: The home station or headquarters of Sam Mathis is Tupelo, Mississippi.

For certain periods during the months of September and October, 1942 Sam Mathis was assigned to operate a weed mowing machine away from his headquarters over the Southern Division. No camp or outfit cars were provided.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, the home station or headquarters of Sam Mathis is Tupelo, Mississippi to which point he is regularly assigned as a section laborer-relief foreman. From September 8th to 30th and from October 1st to 9th, 1942, Sam Mathis was assigned to operate a weed mowing machine away from his headquarters over the Southern Division. No camp or outfit cars were provided.

Rule 12 (a) and (c) of Agreement in effect between the Carrier and the Brotherhood reads:

"(a) When employees are temporarily taken away from their camp outfits or headquarters to perform work requiring variable hours, they will be paid for all time worked in excess of eight (8) hours per day on overtime basis, and time traveling will be paid for at straight time rate. Time waiting after the first eight (8) hours will not be paid for, provided that in no case will such employees be paid for less than eight (8) hours for each calendar day worked."

"(c) When employees, enumerated in Sections (a) and (b) of this rule, are taken away from camp outfits or headquarters to perform work requiring variable hours, meals and lodging will be furnished at the company's expense."

As will be observed, Rule 12 (c) provides that employees who are temporarily taken away from their camp outfits or their headquarters will be furnished with meals and lodging at the railway company's expense.

Second, "camp outfits" (camp cars with kitchen stove and cooking equipment) and "headquarters" are not synonymous terms. With floating forces camp cars (when furnished) usually are at the headquarters of the force, but, in a case where Rule 17 does not require that camp cars be furnished, headquarters of the force becomes established just the same, and, afterwards, "when practicable," camp outfits may be furnished. In other words, a "floating force" such as a welding gang or a machine operator, may be said to have a "floating headquarters" as distinguished from the "stationary headquarters" of a force such as a Section gang. Incidentally, it is a fact that the "headquarters" of a section gang is the location where the force regularly assumes duty and is relieved from duty, and the existence or non-existence there of section houses is not a factor. Likewise, the "headquarters" of a floating force is the location where that force regularly assumes duty and is relieved from duty, and similarly, whether or not there are camp cars at such location is not a factor.

Third, floating forces such as machine operators, when they are at the location where (according to their assignment) they are to assume duty, are not within the scope of Rule 12 (c) because that provision applies only to employees who "are temporarily taken away from camp outfits or headquarters" to "perform work requiring variable hours." The claimant was not temporarily taken away from headquarters; he was not taken from his headquarters at all.

Fourth, the carrier is not required, by its agreement with the Brotherhood of Maintenance of Way Employees, to furnish either meals or lodging to floating forces at any time. It is required to furnish camp cars but that requirement exists only "when practicable" to do so. It is true that sometimes when it is not practicable to furnish camp cars to a floating force such as a machine operator, the carrier voluntarily has reimbursed the operator for a reasonable cost of lodging—and the claimant here was so reimbursed. With one exception, so far as is known, the carrier has never reimbursed floating forces for the cost of meals. The one exception was because of unusual circumstances, and was simply a voluntary contribution.

This Carrier contends that the claimant was regularly assigned as Weed Mowing Machine Operator having headquarters at one station after another as his work progressed on the M. & M. Districts of the Southern Division during the period September-October, 1942; that claimant was not furnished with a camp car as it was not practical so to do; that carrier has no obligation to furnish meals to any employee when such employee is at his headquarters, as was claimant.

Carrier therefore holds the opinion that the claim here presented is wholly without merit, is in fact a means for seeking a new and additional rule without negotiations, and requests the Board to so find.

OPINION OF BOARD: This is a claim for expenses for meals incurred during the time employee asserts he was temporarily taken away from his headquarters. The instant case is governed by Rule 12 (a) and (c), which reads:

"RULE 12

MEALS AND LODGING—TEMPORARY ASSIGNMENTS AND TRAVELING

(a) When employees are temporarily taken away from their camp outfits or headquarters to perform work requiring variable hours, they will be paid for all time worked in excess of eight (8) hours per day on overtime basis, and time traveling will be paid for at straight time rate. Time waiting after the first eight (8) hours will not be paid for, provided that in no case will such employees be paid for less than eight (8) hours for each calendar day worked.

* * * * *

(c) When employes, enumerated in Sections (a) and (b) of this rule, are taken away from camp outfits or headquarters to perform work requiring variable hours, meals and lodging will be furnished at the company's expense."

The rule applies in either of two instances, namely (1) where employes are temporarily taken away from their camp outfits, or (2) where employes are temporarily taken away from their headquarters. In either event carrier is obligated under the rule to provide meals and lodging at its expense unless it furnishes camp cars, as provided in Rule 17.

Under Rule 17 it is optional with carrier whether camp cars are to be provided. No such equipment was furnished either where employe was performing the temporary assignment or at the place where he was regularly assigned. But Carrier is still obligated to pay expenses if employe brings himself within Rule 12.

The question posed by the claim in this case is, therefore, was employe under the facts disclosed by the record temporarily taken away from his headquarters? We believe that under a reasonable interpretation of this rule the headquarters of Claimant was at Tupelo where he was regularly employed in the capacity of section laborer and relief foreman. Compare Award 1446. That he was temporarily taken away from such headquarters to perform the weed mowing work seems clear from the fact that he worked on that assignment only from September 8 to 30, and from Oct. 1 to 9, 1942.

Having been temporarily taken away from his headquarters at Tupelo, he brings himself within the rule and is entitled to expenses for meals.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1945.