

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE CHICAGO ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

Joseph B. Fleming and Aaron Colnon, Trustees

STATEMENT OF CLAIM: (a) Claim that the Carrier violated the current Signalmen's Agreement when it did not transfer H. L. Schildmiller to his position of Signal Maintainer at Louisville, Nebr. within the prescribed time limit of fifteen days.

(b) Claim that Schildmiller be paid the difference in earnings he received and what is due him account of the violations. Amount claimed \$45.76.

(c) Claim that Schildmiller be allowed expenses while held away from his newly assigned headquarters. Amount claimed for expenses \$20.50.

EMPLOYEES' STATEMENT OF FACTS: An agreement, effective July 1, 1938, is in effect between the Chicago, Rock Island and Pacific Railway Company and the Brotherhood of Railroad Signalmen of America, which governs the rates of pay, hours of service, and working conditions of all employees on this property engaged in work generally recognized as signal work. We understand a copy of the agreement is on file with this Board and we request that it be considered a part of the record in this claim.

This claim was handled in the usual manner on the property, as provided in the Railway Labor Act, without securing a satisfactory settlement.

On July 3, 1945, a signal maintainer's position was bulletined for seniority choice, with headquarters at Louisville, Nebr., and regular working hours from 8:00 a. m. to 5:00 p. m., with one hour off for lunch, and Sundays and holidays designated as days off duty. The claimant, H. L. Schildmiller, was the successful applicant by virtue of his seniority and was awarded the position on a bulletin dated July 12, 1945. Under the proper application of agreement rules, Schildmiller should have been transferred to his newly acquired position on or before noon of July 28, 1945. He was not transferred until after he had worked the 3:00 p. m. to 11:00 p. m. shift at Gresham, Ill. on August 2, 1945.

The position that Schildmiller worked prior to acquiring his new position at Louisville, Nebr., was that of second shift signal maintainer at Gresham, Ill., with regular working tour of eight hours per day, six days per week. The assigned day off duty was Wednesday, and regular working hours were established between 3:00 p. m. and 11:00 p. m. Schildmiller had worked

uninformed as to the rule on which the employees base their claim for expenses under the circumstances in this case. The Board will note that the last paragraph of Rule 21 quoted above states that "Actual necessary expenses will be allowed when away from headquarters". Gresham was the claimant's Headquarters until he was transferred. We construe this paragraph of Rule 21 to mean that when employees are sent from headquarters and held out over night they will be paid the **actual necessary expenses**. In our opinion this provision in no way supports the claim of the employees that the claimant in this case is entitled to expenses. We are at a loss at this time to discuss the details of the expenses for the reason that we do not have an itemized statement of them or information as to the basis upon which they are claimed. Rule 51 of the current agreement with the Signalmen reads:

"Employees accepting positions in the exercise of their seniority rights shall do so without causing extra expense to the railway. Free rail transportation will be furnished as provided in Rule 24."

Assuredly, Mr. Schildmiller was accepting a position in the exercise of his seniority rights and if so, we understand Rule 51 to deny him any right to collect expenses from the Railway. It is our understanding that Mr. Schildmiller lived with his family in Chicago during the period of this claim the same as he had during the period of his assignment on the Gresham position. In other words, there was no change in his residence status during the period of the claim. His family, according to our understanding, did not precede him to Louisville. His expenses, therefore, if our understanding is correct, were basically no different during the period of this claim than they had been previously. Here again it appears that the employees are endeavoring to so construe Rule 21 as to add expenses which were not incurred simply as a penalty to the Carrier because it was unable to transfer the claimant within the fifteen (15) days period set up in Rule 67. It is not our opinion that this is a proper construction of Rule 21. The allowance of actual necessary expenses when away from headquarters was to compensate for the additional actual necessary expenses which an employee may have when at the direction and for the convenience of the Carrier he was obliged to be away from his headquarters and for that reason he was not privileged to live in his own residence, but had to maintain his family at home while at the same time paying extra expenses at another station during the period of time he was there in the service of the Carrier. That is not true in the instant case. Mr. Schildmiller was not maintaining two residences, nor did he maintain a residence, if we understand the matter properly, and live elsewhere, but instead he lived with his family as he had during all the time he was working on the Gresham assignment. Here again to find in favor of employees would be to place an entirely erroneous construction upon the meaning of Rules 21 and 51, and again would be tantamount to writing a new rule into the Agreement of July 1, 1938, which would be a **penalty expense rule**.

We respectfully petition your Board to consider the extenuating circumstances in which the Carrier found itself in connection with its desire to comply with Rule 67 and that it did make every reasonable effort to try to transfer Mr. Schildmiller at the earliest possible date. We, therefore, request that the claim of the employees be denied.

OPINION OF BOARD: Claimant, while assigned to a regular position of signal maintainer at Gresham, Illinois, bid on a similar position bulletin for Louisville, Nebraska. He was awarded the latter position under a bulletin dated July 12, 1945.

Rule 67 of the current Agreement, insofar as pertinent, provides:

"Transfer of the successful applicants to new assignments will be made within fifteen (15) days after close of bulletin."

Under this rule Claimant should have been released from his assignment at Gresham July 28th. He was held on that assignment, however, until August 2nd. He was paid at the rate of \$1.04 an hour which was the same rate as that of the position he had been awarded at Louisville, Nebraska. He

suffered no actual wage loss as a result of his being held away from his new headquarters at Louisville from July 28th to August 2nd. Obviously, he could not work both positions.

There is no penalty prescribed in Rule 67 for violation of the provisions we quoted. Consequently, unless a penalty for violation of the provision is inherent in some other rule of the Agreement the Claimant may recover only actual wage loss. We do not think that Rules 10, 11, 13, 14, 16 and 30 have any bearing on the issues presented. Rules 15 and 21, however, do have. Rule 15 provides for payment at time and one-half rate when an employe is required to work on his regular day off. Rule 21, insofar as pertinent, provides:

“Actual necessary expenses will be allowed when away from headquarters.”

Louisville became Claimant's headquarters on July 28th. Sunday was the rest day assigned to that position. Claimant worked Sunday, July 29th, at Gresham for which he was entitled to pay at time and one-half rate under Rule 15. He was also entitled to his actual necessary expenses while held away from Louisville, his headquarters—July 28th to August 2nd, inclusive.

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 the Carrier violated the Agreement.

AWARD

Paragraph (a) of claim sustained.

Paragraph (b) sustained for the amount of \$4.16 only.

Paragraph (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1947.