

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Assistant Section Foreman W. W. Duhon, Lake Charles, Louisiana, who was taken away, by instruction of the management, from his regular headquarters at Lake Charles to serve as relief section foreman on Section 26, Scott, Louisiana, Lafayette Division, from September 1 to 20, 1945, inclusive, shall under the application of Article V, Rules 21 and 22 of the agreement in effect, be reimbursed for expenses incurred, i.e., \$30.00 for lodging and \$27.70 for meals, or a total of \$57.70.

EMPLOYEES' STATEMENT OF FACTS: W. W. Duhon was employed as assistant section foreman at Lake Charles, Louisiana, with headquarters at Lake Charles, Louisiana. On September 1, 1945 Duhon was instructed to leave Lake Charles, his headquarters, and go to Scott, Louisiana, to relieve Section Foreman C. J. LeBlanc, Section 26, at Scott, Louisiana. While working at Scott, Louisiana, away from his regular headquarters, Duhon incurred expenses for lodging in the amount of \$30.00 and for meals in the amount of \$27.70, or a total of \$57.70.

Agreement effective December 1, 1937 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 Assistant Section Foreman W. W. Duhon was at Lake Charles, Louisiana. On September 1, 1945 Duhon was instructed by his superior officer to leave his headquarters at Lake Charles and proceed to Scott, Louisiana, to relieve Section Foreman LeBlanc. Duhon worked at Scott, Louisiana, away from his headquarters at Lake Charles, relieving Section Foreman LeBlanc, from September 1 to 20, 1945, inclusive.

Rules 21 and 22 of agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes, governing reimbursement for expenses incurred by employes when away from their home station, or headquarters, read:

"TRAVEL TIME.

RULE 21. Except as provided by Rules 14 and 17 of this Article, Bridge and Building Foremen and Mechanics and their helpers, Section Foremen and Extra Gang Foremen, who are required by the direction of the management to leave their home station will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with

Foremen and in such status they have been used to perform extra and relief service in emergency and in the fulfillment of lay-off and vacation vacancies. They have always taken rates of pay and conditions of the Section Foreman's position on which they were used and upon completion of that temporary service they have been returned to their regular positions of Assistant Section Foremen in the manner contemplated in Rule 5 of Article II of the Agreement. Personal expenses have never been claimed or paid for such temporary relief service.

CONCLUSION: The Carrier has shown that the claim of W. W. Duhon for personal expenses while filling the temporary vacancy of relief Section Foreman at Scott, Louisiana, September 1 to September 20, 1945, is not supported by the Agreement.

Every effort has been made to set out all known relevant argumentative facts, including documentary evidence in exhibit form.

Wherefore, premises considered, the Carrier respectfully requests that the claim of W. W. Duhon for personal expenses for the period September 1 to September 20, 1945, inclusive, be denied.

OPINION OF BOARD: At the time this controversy arose Claimant held a position of Assistant Section Foreman with headquarters at Lake Charles, Louisiana. On September 1, 1945, he was assigned temporarily to the position of Section Foreman at Scott, Louisiana, on which assignment he remained until September 20th.

This claim is for expenses during the period September 1st to 20th; and is based on Article V, Rules 21 and 22, of the current Agreement which, insofar as pertinent, provide:

RULE 21. "* * * Section Foremen and Extra Gang Foremen, who are required by the direction of the management to leave their home station will be allowed actual time for traveling or waiting during the regular working hours. * * * Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed."

RULE 22. "In emergency cases, employees taken off their assigned territory to work elsewhere will be furnished meals and lodging by the railroad if not accompanied by their outfit cars. * * *"

The Carrier cites Article II, Rules 5 and 10, and Article III, Rules 1 and 2. We fail to see any relevance whatever of Article II, Rule 5, to the situation. Nor can we see how Article III, Rules 1 and 2, relating to the bulletining of, and promotions to, vacancies and new positions have any bearing on the issue presented.

Article II, Rule 10, provides:

"Employees accepting positions in the **exercise** of seniority rights will do so without causing expense to the Railroad Company. * * *"
(Emphasis added.)

Obviously, this controversy must be determined on the facts in the light of the provision of this rule and the provisions of Article V, Rules 21 and 22. In other words, as we view it, the question is whether, under the facts, Claimant accepted the position at Scott "in the exercise of (his) seniority rights."

The Carrier insists that he did. The facts, however, upon which the contention is based do not, in our opinion, support it. They are in substance: that Claimant was eligible for promotion to a position of Section Foreman; that the custom was to assign such an assistant section foreman to temporary vacancies in positions of section foreman. (We think this custom on the part of the Carrier amounts, at most, to **recognition** of seniority rights on its part. It falls far short of **exercise** of seniority rights by the employee.)

Upon the facts of record we hold that the acceptance by Claimant of the position at Scott was not in the exercise of his seniority rights; and that, under Rules 21 and 22 of Article V, he is entitled to expenses while filling that assignment. See Awards Nos. 769 and 1231.

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 Employees 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1947.