

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that H. R. Nicholson, machine operator, Seniority District No. 5, shall be reimbursed in the amount of \$11.00, expenses incurred for lodging while working as pile driver fireman in B&B crew in charge of Foreman Marvin Smith, from June 8 to 22, 1946, inclusive, on account of that there were no sleeping quarters available for the use of H. R. Nicholson in Foreman Smith's B&B outfit.

EMPLOYEES' STATEMENT OF FACTS: Machine Operator H. R. Nicholson was regularly assigned to a ditcher on Seniority District No. 5. Attached to that ditcher was a regular camp outfit which was H. R. Nicholson's regular camp outfit, or headquarters.

On or about June 8, 1946 Nicholson was instructed to leave the ditcher and his regular camp outfit attached thereto, located at Bemis, Tennessee, and to report to Bridge and Building Foreman Marvin Smith to work as pile driver fireman on the pile driver used by B&B Foreman Smith, at Ovet, Mississippi.

B&B Foreman Smith and his bridge crew were housed in a camp outfit but there was no room or place for Machine Operator H. R. Nicholson to sleep or lodge in B&B Foreman Smith's camp outfit during the days that he, Nicholson, was temporarily assigned thereto. It was therefore necessary for Nicholson to procure sleeping quarters, or lodging, in a hotel uptown. Nicholson was assigned as pile driver fireman in B&B Foreman Smith's gang from June 8, 1946 to June 22, 1946, inclusive.

Agreement effective June 1, 1942 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, Machine Operator H. R. Nicholson was regularly assigned as operator of a ditcher at Bemis, Tennessee on Seniority District No. 5 and that attached to that ditcher was a regular camp outfit which was Nicholson's regular camp outfit or headquarters. As further stated, on or about June 8, 1946, Nicholson was instructed to leave the ditcher and his regular camp outfit attached thereto, and report to B&B Foreman Marvin Smith at Ovet, Mississippi to fire a pile driver attached to Smith's outfit.

As further stated in Employees' Statement of Facts, when Nicholson reached Ovet and reported to B&B Foreman Smith, it was found that there was no lodging place available for him in cars attached to Smith's outfit.

Mississippi, as a Machine Engineer. From August 8th to 15th he worked at various places between Union and Meridian, Mississippi. During the time the claimant was not working he was free to return to any place he wished. There was no requirement that he return to or be at any specific place.

However, regardless of these two prerequisites of Rule 12, camp cars were furnished as provided for in Rule 17, for use of employes of the Bridge gang of which claimant was a part. It is pointed out that this claim is for lodging only. No claim is made for meals. This is evidence that the meals were furnished claimant along with other employes of the gang at his own expense.

The Carrier further maintains that the employes are attempting by way of a submission to your Board, to change Rule 17 of the current agreement to insert a further restriction as to the number of occupants of camp cars, and to require the assignment of certain cars to certain employes. This was not intended by the negotiators of this rule. Certainly had it been the intention of the negotiators to specify the number of occupants in camp cars and to whom assigned, the rule would have been so worded.

The employes make the statement that claimant "was instructed to leave the ditcher and his regular camp outfit attached thereto, located at Bemis, Tennessee". The Claimant was not instructed to leave the ditcher and his regular camp outfit. The ditcher was not working and claimant was not employed by Carrier from May 25, 1946, until June 8, 1946. We do not know his whereabouts during this period of time but he was notified at his home at Bethel, Mississippi, on June 7, that work was available at Ovet, Mississippi. While working at Bemis, Claimant was employed as a Machine Operator, however, when employed at Ovet, it was as a fireman or helper. If camp cars could be said to be assigned to an individual (which they are not), they would be assigned to the operator and not to the helper.

The Carrier contends:

(1) That Claimant Nicholson was not temporarily taken away from a camp outfit or headquarters, (2) When Claimant reported to Ovet, Mississippi, to work with the Bridge and Building gang, he became a part of that gang, and (3) Camp cars were assigned to the Bridge and Building gang at Ovet, they were available to Claimant, and there was ample space for Claimant to occupy one of these camp cars.

Therefore, Carrier respectfully requests that this claim be declined.

OPINION OF BOARD: H. R. Nicholson, a machine operator who also held seniority as a pile driver fireman, was notified by the Carrier on June 7, 1946, to go to Ovet, Mississippi, to fire a pile driver with a B&B gang.

Nicholson's last previous assignment was with a ditcher outfit at Beemis, Tennessee, a position which had been discontinued, temporarily at least. He received the notice at Newton, Miss., where he had arranged to have such notices sent.

While with the ditcher outfit, Nicholson lived in a camp car.

When he arrived at the B&B gang's camp cars at Ovet, the foreman in charge of the gang told him there was no room for him in the cars. He obtained lodging in a nearby hotel. The Organization now asks that he be reimbursed for the cost of this lodging (\$11) under Rule 12-(a) and (c) of the Agreement.

Rule 12-(a) and (c) provides, in effect, that employes taken away from their camp outfits or "headquarters" to perform work requiring variable hours will be furnished with meals and lodging "at the company's expense". Rather than to labor over the meanings of the individual words of the rule, as paraphrased above, we will try to see what the intent of the rule was, and whether the Carrier complied with it in this case.

Obviously the intent was about as follows:

When a maintenance of way employe, living with a camp outfit or at the home station of a gang, is called to go elsewhere temporarily, the Carrier must furnish him bed and board.

In other words, the rule recognizes the commonly accepted principle of employer-employe relationship in regard to temporary assignments away from "headquarters": the employer pays the living expenses.

On the basis of the facts in this case, we will find that Nicholson was entitled to bed and board at the Carrier's expense, on the Ovett assignment and that, therefore, it has violated Rules 12-(a) and (c) in refusing to reimburse him for his hotel bill. Nicholson was an employe of the Carrier at the time he received the Ovett assignment. Although he was not working with his ditcher outfit at that time, that outfit was his "headquarters". He apparently had every expectation of returning to that outfit—as he had returned several times in the past. The facts that he was temporarily laid off and that he received his notice to go to work at a different address are irrelevant. It is equally irrelevant that one of the cars at Ovett had room for Nicholson. When the foreman told him there was no room, Nicholson could assume that there was none.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1947.

DISSENT TO AWARD 3698, DOCKET MW-3647

This mistaken award springs from the error of its basing conclusions, i. e.,

"Nicholson was an employe of the Carrier at the time he received the Ovett assignment. Although he was not working with his ditcher outfit at that time, that outfit was his 'headquarters'."

thus expressed after giving cognizance to—

"Nicholson's last previous assignment was with a ditcher outfit at Bemis, Tennessee, a position which had been discontinued, temporarily at least."

Contrary to these conclusions, at the time Nicholson was offered the Ovett assignment, June 7, 1946, and for some time prior thereto as related to and provided in the Agreement, he had only the status of an employe

out of service account of force reduction with seniority rights to return to service in accord with the provisions of the Agreement if and when forces were increased, and not with headquarters except as fixed by the Agreement when and as he was restored to service.

After the work at Bemis was discontinued May 25, 1946, the idle and unused camp cars did not constitute a "headquarters" within the meaning of the Agreement. A camp outfit becomes a headquarters only when it is bulletined as such or otherwise is used in active service. It ceases to be a headquarters when the gang or individuals occupying same are disbanded or laid off.

Nicholson did not occupy the status of an employe taken away from his camp outfit or headquarters to perform work requiring variable hours as provided for in Rule 12 (a) and (c).

/s/ C. P. Dugan
/s/ R. F. Ray
/s/ R. H. Allison
/s/ A. H. Jones
/s/ C. C. Cook