Award No. 4738
Docket No. SG-4638

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

FORT WORTH AND DENVER CITY RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that Assistant Signal Maintainer R. Q. Meason regularly assigned as such, with headquarters at Fort Worth, Texas, be allowed expenses in the amount of $85.82, which were accrued by Meason when the Carrier used him to relieve Signal Maintainers at other points during June and July, 1947.

EMPLOYES' STATEMENT OF FACTS: When this dispute originated the claimant was a regularly assigned Assistant Signal Maintainer with headquarters at Fort Worth, Texas. He secured this position by virtue of his seniority under current working agreement rules.

The claimant was used by the management to relieve Signal Maintainers at points removed from the claimant's regularly assigned headquarters at Fort Worth.

The Carrier while using the claimant away from his home station to relieve Signal Maintainers caused him to accrue actual away-from-home-station living expenses in the amount of $85.82.

The claimant filed itemized expense accounts covering the above expenses, and the Carrier declines to remunerate the claimant for these actual away-from-home living expenses.

The working agreement rule applicable in this dispute reads as follows:

> "Rule 22.—A regularly assigned employe, when sent from home station to fill temporary vacancy for one day, will be paid in accordance with Rule 12; if for more than one day he will be paid in accordance with Rule 13. While filling this vacancy he will be paid for the hours worked at the established rate for the position but not less than his regular rate. Actual expenses will be allowed when away from home station."

There is a working agreement between the parties to this dispute bearing effective date of November 1, 1946, and request is made that it, by reference, be made a part of the record in this dispute.

This dispute was handled in the usual manner on the property without securing a satisfactory settlement.

In handling this dispute on the property, the Carrier took the position that the claim turned upon the application of the National Vacation Agreement dated at Chicago, Illinois, on December 17, 1941. We did not nor do we

Rule 22 concerns the treatment of an employe who is sent from home station to fill a temporary vacancy. It is necessary here to turn back to the Vacation Agreement. Under Rule 12-(b) of that agreement the absences of the regularly assigned signal maintainers which permitted Meason to work as signal maintainer at Bellevue, Plainview and Decatur, respectively, were not vacancies.

Carrier takes the position that there is no support for the Meason claim either under the rules of the Vacation Agreement or under the rules of the working agreement and respectfully asks that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was a regularly assigned assistant signal maintainer, with headquarters at Fort Worth, Texas. He was assigned to relieve three signal maintainers in succession, each of whom had headquarters separate and distinct from his regularly established headquarters at Fort Worth—one at Bellevue, another at Plainview and the third at Decatur. Carrier allowed claim for his expenses, except as to his away-from-home living expenses while at the headquarters of the positions which he relieved. Those expenses are involved in this claim.

Claimant relies on Rule 22, providing that a regularly assigned employe when sent from home station to fill temporary vacancy will be paid for the hours worked at the established rate for the position, but not less than his regular rate, and that "actual expenses will be allowed when away from home station."

Carrier first challenges our jurisdiction on the grounds that the three signal maintainers whom Claimant relieved were each absent on vacation; that the applicable rules of the Vacation Agreement prevailed and that under that Agreement any dispute or controversy must first go to the Vacation Committee as provided by the agreement. The record shows that the matter was presented to the Vacation Committee and that the Chairman declined to take jurisdiction of the dispute. In any event, by many decisions of this Division it is held that prior submission to the Vacation Committee is not necessary; among them are Awards Nos. 2340 and 3025.

Carrier next urges that Rule 12(a) of the Vacation Agreement provides that "a carrier shall not be required to assume greater expense because of granting a vacation," and that the allowance of this claim would create an expense because of vacations, which would not otherwise have been incurred. Regardless of what might be the opinion of the Referee if this were a new question, the matter has been so thoroughly and repeatedly discussed, beginning with the interpretation by Referee Wayne L. Morse in June, 1942, and in the opinions and Awards Nos. 2340, 2484 and 3022, that we feel bound by the consistent and repeated holding that the Working Agreement between the Carrier and the Brotherhood prevails over any provisions of the Vacation Agreement in the absence of a negotiated change.

It is finally urged that when Claimant took over the work of a signal maintainer at a more remunerative wage, then, under Rule 22, the established rate for the position included the conditions of that position as to expense money, and the home station of the position relieved became the home station of the claimant while relieving it. In the claim resulting in Award No. 706 claimants were temporarily assigned to relieve signalmen absent on leave, and like contention was made by the Carrier that the temporary assignment changed the home staiton of the employe to that of the position to which assigned, but that contention was not sustained and it was held that claimants were entitled to expenses while away from their regular home station. In Awards Nos. 769, 935, 1674 and 1834, the same conclusion was reached, and nothing here appears to justify change from such well-established interpretation of the rule.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Empoyes 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 claim for expenses was warranted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1950.