

Award No. 4834
Docket No. MW-4738

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the Agreement by not allowing Section Foreman Lloyd V. Hicks for his actual necessary expenses incurred by him while attending an investigation at Jefferson City, Missouri, on July 1 and 2, 1948;

(2) That Section Foreman Lloyd V. Hicks be now reimbursed for the amount of the expenses incurred as specified in part 1 of this claim.

EMPLOYEES' STATEMENT OF FACTS: On or about July 1, 1948, Section Foreman Lloyd V. Hicks, Eureka, Missouri, was instructed by the Carrier to report to Jefferson City, Missouri, for an investigation involving the theft of Carrier-owned gasoline. In order to comply with the Carrier's instructions, Mr. Hicks consumed two days, July 1 and 2, 1948, in appearing at this investigation. During the investigation the Carrier absolved Foreman Hicks of any responsibility connected with the theft of this company gasoline and the Carrier advised Mr. Hicks to return to service and that he would be paid for the two days pay which he lost on this account.

Foreman Hicks incurred expenses for meals and lodgings to the extent of \$6.70. Mr. Hicks submitted this bill of expenses to the Carrier but the Carrier has refused to allow it.

The agreement in effect between the two parties to this dispute dated July 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: We quote below letter of Division Engineer G. L. Brown addressed to General Chairman H. B. Oholendt under date of July 27, 1948.

"MISSOURI PACIFIC RAILROAD

Mr. H. B. Oholendt
717 Missouri Insurance Bldg.
St. Louis 1, Mo.

Jefferson City, Mo., July 27, 1948

Dear Sir:

Referring to your letter of July 14 concerning claim of L. V. Hicks, account of being taken out of service July 1 and 2, 1948, pend-

be no doubt but that Section Foreman Hicks is entitled to full payment for expenses incurred by him on those dates.

We respectfully request our claim be allowed.

CARRIER'S STATEMENT OF FACTS: 1. There is in effect an agreement between the Missouri Pacific Railroad Company and the Brotherhood of Maintenance of Way Employees, bearing effective date of July 1, 1938, copy of which is on file with the Board.

2. The claimant, Lloyd V. Hicks, was section foreman at Eureka, Missouri, and on July 2, 1948 was required, along with the two agent-operators, to attend an investigation at Jefferson City, Missouri. The claimant, Lloyd V. Hicks, was charged, along with the agent-operators, with appropriating company property for personal use and removing one drum of gasoline from the station premises at Eureka, Missouri on June 25, 1948.

3. Due to attending the investigation at Jefferson City on July 2, Claimant Hicks did not work on July 1 and July 2. At the conclusion of the investigation Mr. Hicks was returned to service and was paid for the two days—July 1 and July 2—the wages he would have been paid had he remained on his job at Eureka, Missouri. The rule controlling in this instance—paragraph (f) of Rule 12—is quoted for your convenience:

"DISCIPLINE AND GRIEVANCES: Rule 12 (f). If the charge against the employe is not sustained, it shall be stricken from the record. If, by reason of such unsustained charge, the employe has been removed from position held, reinstatement will be made and he shall be compensated for the wage loss, if any, suffered by him."

The claim for expenses, amount \$6.70, was progressed on the property, and the General Chairman, in his letter dated September 28, 1948, copy of which is attached as Carrier's Exhibit "A", states the position and basis for claim on an opinion of his own, as expressed in the last paragraph of that letter, which reads:

"It is our opinion that Mr. Hicks should be reimbursed in the amount of \$6.70, the amount of his expenses that he was out because of the fact that he was not proven guilty of the charges that were preferred against him, and we will appreciate any consideration that you may give to the allowing of the expense referred to above."

POSITION OF CARRIER: It is the position of the Carrier that there is no rule to support the claim for expenses. It is the position of the Carrier that the agreement was complied with by the Carrier when it made Claimant Hicks whole for wages lost.

The claimant was charged with an offense which if sustained would have been a violation of the Company rules and the employe would have been subject to severe discipline. The employe had the privilege of a fair and impartial trial as set up in the Discipline and Grievance Rule No. 12 of the agreement. The history of the Discipline and Grievance Rule is well known to members of the Board and to all railroad men. Prior to the adoption of such a rule in a wage schedule between the Carrier and the Employees, discipline was assessed without an investigation in the form now followed and as prescribed by the wage agreement. The claimant defended himself under the provisions of this rule at a hearing held under the provisions of this rule, and when he was absolved of the charges preferred against him he was returned to service with the provisions of the rule and compensated for time lost in accordance with the provisions of the rule.

The claim is without support under the agreement and should be denied. (Exhibits not reproduced).

OPINION OF BOARD: Claimant was instructed by the Carrier to report at Jefferson City, Missouri, for an investigation involving the theft of gasoline belonging to the Carrier. Claimant consumed two days, July 1 and 2, 1938, in attending the investigation. He was paid for the two days pay he

lost but the Carrier refused to pay for meals and lodging in the amount of \$6.70. The claim is for these expenses.

The record shows that claimant and two others were suspected of the theft of a fifty-gallon drum of gasoline belonging to the Carrier. Claimant was notified to appear at the investigation because of a part that he allegedly had in the theft. He was absolved of responsibility at the investigation and returned to service. The claim is controlled by Rule 12 (f), Current Agreement, which provides:

"If the charge against the employe is not sustained, it shall be stricken from the record. If, by reason of such unsustained charge, the employe has been removed from position held, reinstatement will be made and he shall be compensated for the wage lost, if any, suffered by him."

The Carrier has compensated claimant for his wage loss. This is all that the rules require. It is only when the claimant is not personally involved in the matter being investigated that payment of expenses might be had under the "work" rules of the Agreement. Awards 2824, 3987. The claimant was personally interested in the investigation. He was threatened with disciplinary action, the possible loss of his job. It cannot be said, therefore, that he appeared solely in the interest of the Carrier. "Under such circumstances Rule 12 (f) provides the extent of the reimbursement to which he is entitled.

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 employees 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 Agreement was not violated.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of April, 1950.