

Award No. 5293

Docket No. MW-5183

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee.

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY**

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

(1) That the Carrier violated the effective agreement when it failed to reimburse Section Laborer H. A. Woods of Camden, Tenn., for the necessary expenses incurred by him while required to fill Section Foreman's positions at Dresden, Tenn., during month of May, 1949, at Kingston Springs during month of June 1949, and at McEwen, Tenn., during month of July 1949.

(2) That H. A. Woods be reimbursed in the amount of \$42.88 to cover expenses incurred during time he was required to fill Section Foreman's positions at the various locations referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to January 24, 1948, H. A. Woods established seniority as a Section Foreman on the Nashville, Chattanooga & St. Louis Railway.

On January 24, 1948, and subsequent dates thereto, H. A. Woods was working as a Section Laborer at Camden, Tennessee.

On January 24, 1948, H. A. Woods notified the Carrier that it was his desire to remain at Camden, Tennessee as a Section Laborer, rather than take relief positions as Section Foreman.

From May 23, 1949 to May 28, 1949, both dates inclusive, claimant H. A. Woods was assigned by the Carrier to fill the position of Section Foreman at Dresden, Tennessee, and while so assigned, incurred necessary expenses totalling fourteen dollars and thirteen cents (\$14.13).

From June 1, 1949, to June 14, 1949, both dates inclusive, H. A. Woods was assigned by the Carrier to fill the position of Section Foreman at Kingston Springs, Tennessee, and while so assigned, incurred necessary expenses totalling fifteen dollars (\$15.00).

From July 1, 1949 to July 14, 1949, both dates inclusive, claimant H. A. Woods was assigned by the Carrier to fill the position of Section Foreman at McEwen, Tennessee, and while so assigned, incurred necessary expenses totaling thirteen dollars and seventy-five cents (\$13.75).

ant from his turn in filling such temporary vacancies under Rule 13(a) or that Claimant's letter of January 24, 1948 constituted a modification of Rule 13(a) insofar as the application of same to Claimant was concerned.

Carrier submits there is no contractual basis for either contention.

In conclusion Carrier submits, neither the provisions of the applicable rules involved, nor the established interpretative practice, supports the Employees' claim for the payment of expenses incurred in connection with the performance of relief foreman's work in accordance with Rule 13(a).

Claimant's letter of January 24, 1948, upon which the Employees rely, obviously did not constitute a modification of Rule 13(a) or 28(b).

There has been no rule violation, nor is there any contractual basis for the claim. Therefore, the claim should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant incurred necessary expenses while away from his regular outfit or regular headquarters by direction of the Management.

Claimant relies on Rule 28(b) which provides:

"(b) Employees will be reimbursed for necessary expenses incurred while away from their regular outfits or regular headquarters by direction of the Management, whether off or on their assigned territory; this rule not to apply to employees traveling in exercise of their seniority rights."

The Carrier refused the claim upon the ground that Claimant was traveling in the exercise of his seniority rights.

Claimant had established seniority as a Section Foreman. He was thereafter displaced and assigned to a position as Section Laborer, retaining however his seniority as Section Foreman. The expenses in dispute were incurred during his use to fill temporary vacancies in Section Foreman positions not required to be bulletined.

Rule 13(a) required his use in filling the vacancies by providing:

"(a) A temporary vacancy or temporary position of section foreman \* \* \* will be filled by using the senior foreman of the class in which the position is open on the supervisor's district, who is not at work as foreman at the time \* \* \*."

and Claimant was the senior foreman of the class described.

Rule 13(b) provides:

"(b) Except as provided in section (a) of this rule, employees above the class of laborer, temporarily out of the service on account of force reduction, or working in a lower class, will be entitled to protect temporary vacancies or positions in the order of their seniority and may be required to protect temporary work in the last class in which they held a regular position or in a higher class."

**FIRST:** There would be no doubt that an employe would have no right to expenses under Rule 28(b) when he bids off a position and takes a new one, or is displaced and exercises his displacement rights on a new position, away from his regular outfit or regular headquarters. In each case, the employe has some free choice between traveling and sitting still; and hence the expense is his if the choice which he makes involves traveling. Here Claimant was sent traveling in recognition of his seniority rights, which the

Carrier was obliged to observe in his selection (Rule 13(a)) and which Claimant was "entitled to protect" and might be "required to protect" (Rule 13(b)). This was not an exercise of seniority rights within the meaning of the Rule; it was no more than compliance with the requirements of the seniority rules. Awards 706 and 769 support this conclusion (compare Awards 1231, 3426, 3495 and 4172).

**SECOND:** The dispute arises from the proper conclusion to be drawn from the use of the words "in the exercise of their seniority rights" and not from any ambiguity or indefiniteness in the Rule.

Such being the case, the Rule governs, notwithstanding past contrary practices (Award 5278 and awards there cited).

**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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1951.