Award No. 5488
Docket No. CL-5421

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

GULF, COLORADO & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that J. J. Woodall be paid the sum of ninety-eight and 70/100 dollars ($98.70) to cover his actual living expenses account sent to Gainesville, Texas, to relieve J. M. Fleenor on vacation December 17, 1947, to December 28, 1947, inclusive, and from December 29, 1947, to January 12, 1948, inclusive, account illness of Mrs. Fleenor.

EMPLOYES' STATEMENT OF FACTS: Mr. J. M. Fleenor, Roundhouse Clerk, Gainesville, Texas, was absent from duty from December 17, 1947, to December 28, 1947, inclusive, on his annual vacation and from December 29, 1947, to January 12, 1948, inclusive, account illness of his wife. Mr. J. J. Woodall, an off-in-force-reduction employe at Cleburne, Texas, was instructed by Carrier on December 16, 1947, to be in Gainesville the morning of December 17, 1947, to relieve Mr. Fleenor. Mr. Woodall reported to Gainesville to relieve Mr. Fleenor on December 17, 1947, as instructed, and he was required to remain in Gainesville and fill Mr. Fleenor's position to and including January 12, 1948.

During the time Mr. Woodall was thus required by the Carrier to be away from his home and headquarters, December 17, 1947, to January 12, 1948, he incurred the following necessary expenses for which he has not been reimbursed:

Date		Breakfast At Gainesville	Lunch At Gainesville	Dinner At Gainesville	Lodging At Gainesville	Total
Dec.	17	$ .75	$ .90	$ 1.10	$ 1.00	$ 3.75
"	18	.75	.95	.90	1.00	3.60
"	19	.75	1.00	.95	1.00	3.70
"	20	.90	.90	.95	1.00	3.75
"	21	.85	.95	.90	1.00	3.70
"	22	.85	.90	1.10	1.00	3.85
"	23	.85	.95	.80	1.00	3.60
"	24	.85	.95	1.00	1.00	3.80
"	25	.85	.90	.95	1.00	3.70
"	26	.90	1.25	.90	1.00	4.05
"	27	.90	.95	.90	1.00	3.75
"	28	.90	1.10	.95	1.00	3.95
"	29	.95	.95	.90	1.00	3.80

(1) There is no rule in the Clerks' Agreement requiring the payment of living expenses to off-in-force-reduction employes when used under any circumstances;

(2) The claim is not supported by the rule cited by the Employes and/or Article 12(a) of the Vacation Agreement also relied upon by them;

(3) A sustaining award by this Board would have the effect of establishing a new rule, is not within the province of the Board but is a matter reserved solely to negotiation between the parties by the provisions of the Railway Labor Act.

(Exhibits not reproduced.)

OPINION OF BOARD: Woodall, an off-in-force-reduction employe at Cleburne, Texas, provided vacation relief for Fleenor, Roundhouse Clerk at Gainesville, Texas, December 17 to 28, 1947, inclusive. He continued on in such relief assignment through January 12, 1948, because Fleenor was given additional time off on account of his wife's illness.

Woodall, claiming Cleburne as his headquarters, maintains that he was entitled to reimbursement of his necessary expenses, in the amount of $98.70, while required to be away from his headquarters pursuant to Article IX, Section 1 of the effective Agreement between the parties. This rule provides in part as follows:

> "Employes not regularly assigned to road service, who are temporarily required to perform service away from their headquarters, which necessitates their traveling, shall be allowed necessary traveling expenses while away from their headquarters and shall be paid while working according to rules for regular assignment, with not less than eight (8) hours each day. * * *"

Under Sections 6 and 13(b) of Article III, employes left unplaced are considered laid off-in-force-reduction employes. Such employes retain their seniority so long as they do not fail during any consecutive 12 months period to perform services. They may bid upon bulletined positions, but cannot displace other employes.

The first question which confronts us is raised in Carrier's Reply to the Employes' Rebuttal Brief of February 7, 1951, wherein the employe status of "off-in-force-reduction employes" is questioned. If they be not "employes" of course Article IX, Section 1 has no application and the claim must be denied. The Carrier argues:

> "An off-in-force-reduction employe has no headquarters, or place of employment, or a place to work. He is merely a **former employe** who has established seniority, and the only right he has is to **again become an employe,** through the recognition of the seniority formerly established.
>
> When he again becomes an employe, his 'headquarters' or 'place of employment' is determined by the 'location' of the position he is to fill, whether such 'headquarters' or 'location' is at the same station or town where he formerly worked or many miles removed therefrom."

Section 13(b), Article III, militates against the above reasoning in so far as employe status is concerned. In this and other sections of the Article, seniority rights seem to be the key to employe status. This status is continuous except that "failure to file and maintain addresses with the proper officials or failure to report for duty within fourteen (14) calendar days after notice of recall therefor, shall result in forfeiture of all seniority rights." We find that Claimant possessed employe status within the meaning of Article IX, Section 1, at all times material hereto.

It is the Carrier's position that there is nothing in Article IX, Section 1, or any other rule of the Clerk's Agreement which requires the payment of necessary traveling expenses to an off-in-force-reduction employe under any circumstances. Referring to the above quoted Article IX, Section 1, Carrier argues:

> "Obviously, there is no support in this rule for a claim for living expenses under circumstances involved in the instant case, and the rule clearly applies to employes who are taken off of **regular positions** and **required to perform service away from their headquarters.** Mr. Woodall had no **regular assignment** and no **regular headquarters.** He was an off-in-force-reduction employe, and, therefore, could not have been taken away from his headquarters, within the meaning and intent of Article IX, Section 1."

We cannot agree with Carrier's interpretation of this rule. Carrier would read into the opening phrase of Section 1, the words "regularly assigned" so as to read "regularly assigned employes." But the language of the Rule is not so restrictive. It says, in substance, " 'Employes' making no distinction between regularly assigned, off-in-force-reduction, or otherwise, and continues 'not regularly assigned to road service', thus distinguishing between those in road service and those employes who are not; again reading, 'who are temporarily required to perform service away from their headquarters, * * *.' "

Carrier then argues that the term "headquarters" applies to the position and not to the individual and since Claimant was not at the time assigned to any position, he could not have any headquarters. This is in support of its contention that the Rule is confined to regularly assigned employes in its application. While the term may have such a restricted meaning under some other circumstances, we are not impressed by such contention when applied to the rule at hand. Neither are we inclined to accept the Organization's contention that it applies to place of residence. Webster gives the word one meaning which seems particularly applicable here and that is that "headquarters" is "the center of operations and of authority." Presumably because past assignments issued from Cleburne, claimant was carried on the seniority roster at Cleburne; he no doubt notified Carrier of his current address as required by the rules at Cleburne, and his other records were maintained at that point. This, rather than the temporary situs of his work or place of residence, would determine his headquarters within the meaning of the Rule.

Carrier argues further that there was no compulsion on claimant to accept the assignment to Gainesville. Carrier seemingly overlooks the provisions of Section 13-b which makes refusal to honor recall a forfeiture of seniority, a valued right.

Further the Carrier argues that the rule under examination clearly applies to employes who are taken off regular assignments because the rule provides that such employes "shall be paid while working, according to rules for **regular assignment** with not less than eight (8) hours each day." Again, words must be supplied to support such a contention. If the word "his" appeared before the phrase "regular assignment" some logic would support the argument advanced, but it doesn't so appear. The phrase above quoted does nothing more than incorporate by reference other rules for use as a guide or standard.

Finally, our attention is directed by Carrier to the reference to the "regular work period" in the second sentence of the rule. The phrase applies to the hours of the position temporarily assumed, again, it does not read "his regular work period."

Carrier is favored by the presence of the reservoir of labor force such as off-in-force-reduction employes constitute. The rules contemplate the use of such employes under various circumstances. To find that this group

is in essence a tramp force, whose headquarters are where they temporarily hang their hats and whereat they must maintain themselves at their own expense while conveniencing the Carrier is to give the controlling rule an unreasonable construction and beyond the reasonable contemplation of the parties.

Award 5194 has no bearing upon the instant claim. The Division was concerned there with the interpretation of the second sentence of Article IX, Section 1. Finding the sentence ambiguous in respect to the matter there involved, the Division properly gave weight to past practice. We find no such ambiguity in the first sentence. Finding its meaning clear, past practice is precluded from consideration under Board precedent too well known to require citation.

While a portion of the time involved in the claim before us constitutes vacation relief, we rest our decision upon the rules appearing in the Agreement between the parties effective October 1, 1942. We have earlier held that where there is any conflict between the schedule agreement and the vacation agreement, the schedule agreement must be applied. (Award 3022.)

We find the claimed expenses to be necessary and reasonable.

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 Employe 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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.

DISSENT TO AWARD NO. 5488, DOCKET NO. CL-5421

The majority have, in this award, reached certain conclusions, by ignoring undisputed factual data in the record and by strained reasoning.

To apply the provisions of Article IX, Section 1 to an individual on furlough status, as the majority have done, ignores the distinction between "employe" and having "employment relationship". Section 13 (b) of Article III, cited by the majority to support erroneous conclusions, gives to the individual an employment relationship status and not an employe status.

The Opinion states that claimant was carried on the seniority roster at Cleburne while the record shows that he was carried on the seniority roster of the Northern Division (Mechanical Department) extending over the entire operating division and includes several locations other than Cleburne.

Starting from this incorrect premise, the majority by strained reasoning then deduce that the division headquarters of the Carrier at Cleburne is "his (claimant's) headquarters" as that term is used in Article IX, Section 1.

The claimant having only "employment relationship" status could have no headquarters.

The Opinion, by again ignoring undisputed facts in the record, further indicates that claimant had no election. The facts show that he was afforded the opportunity to take an assignment at two widely separated locations and that he **elected** to take the assignment on which he was placed.

The award is clearly erroneous.

We dissent.

(s) J. E. Kemp
(s) R. H. Allison
(s) A. H. Jones
(s) R. M. Butler
(s) C. P. Dugan