

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when it failed to compensate K. D. Wilder for expenses and traveling time incurred while relieving the regular section foreman at Thedford;

(2) K. D. Wilder be compensated in the amount of \$41.83 for travel time service rendered while relieving section foreman at Thedford;

(3) K. D. Wilder be reimbursed in the amount of \$65.60 for living expenses incurred while relieving section foreman at Thedford."

EMPLOYES' STATEMENT OF FACTS: K. D. Wilder was, prior and subsequent to the date of the Employees' claim, assigned to the position of Section Laborer at Crawford.

Under date of December 30, 1947, he was required to relieve the Section Foreman's position at Thedford, starting Friday, January 2, 1948.

K. D. Wilder reported to the Depot at Crawford to board Train No. 42 at 8:00 P.M. on January 1, 1948. He traveled on Train 42 to Seneca, where he transferred to Train No. 44. He traveled on Train No. 44, from Seneca to Thedford, arriving at 2:30 P.M., January 2, 1948.

Eighteen (18) hours and Thirty (30) minutes were consumed by Wilder in this travel service. Lodgings at Thedford cost Wilder \$1.00 a day for 30 days, January 2, to 31. He incurred expenses for meals morning and evening, during this period, in the amount of \$35.60.

The temporary assignment at Thedford expired at 4:30 P.M. on January 31. It was, therefore, necessary for Wilder to return to his regular Headquarters at Crawford. He arrived at Crawford on Train No. 43, at 9:00 A.M. February 1, consuming sixteen (16) hours and thirty (30) minutes in travel and waiting time.

Claim was filed in favor of K. D. Wilder, for expenses incurred for meals and lodging while filling the temporary assignment, and for travel and waiting time consumed, at the straight time rate of pay. *

In conclusion, the Carrier asserts that:

1. The claimant in the instant dispute accepted promotion to a temporary vacancy in the exercise of seniority.
2. Rules 46 and 47 specifically provide that compensation for travel time and reimbursement for expenses will not be made to employees traveling in the exercise of seniority rights.
3. The employees have recognized and concurred in the present application of the pertinent rules for many years, indicating without a doubt that they have not regarded it as a violation of the agreement.

In the light of all of the facts and circumstances, there would seem to be no alternative other than to deny the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 46 provides for travel time pay to employees "required by the management" to travel or leave their home station. Rule 47 provides for payment of certain expenses to employees while away from their headquarters or regular outfit "by direction of the management." Both rules provide that no such payment shall be due an employee traveling in the exercise of seniority rights.

The difference between recognition of an employee's seniority rights by a Carrier in the direction of the working force and the exercise of seniority rights by an employee is simply that the latter involves an act of volition or a choice by the employee.

Rule 22(a) provides for examinations to be given to employees in the Track and Bridge Building Sub-departments for eligibility to promotions to positions of assistant foreman or foreman. Rule 22(b) provides for the establishment of an eligible list of those passing the examination in the order of their seniority and for the use of those on such list in the order of their rank thereon for filling vacancies as assistant foreman or foreman. It then also provides:

"The available employee on the 'eligible list' who declines to accept assignment to a vacancy of six work days or more in his turn on the 'eligible list' will be placed at the foot of the list."

In this case the claimant, who then headed the eligible list, was requested to relieve a foreman who was laying off for two weeks. He accepted by telegram saying, "OK will relieve Peterson Thedford Jan. 2nd." We consider that he was entitled to choose as to whether to accept such vacancy or not and that his acceptance thereof was an exercise of his seniority rights under the agreement.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.