

Award No. 5758

Docket No. MW-5744

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the effective agreement when they assigned Welder P. C. Harrell to perform service away from his home station and refused to compensate him for actual necessary expenses incurred;

(2) Welder P. C. Harrell be reimbursed for all necessary expenses incurred while working away from his home station subsequent to May 1, 1950.

EMPLOYES' STATEMENT OF FACTS: Mr. P. C. Harrell is regularly employed as an Electric Welder with headquarters at Parsons, Kansas.

Under the provisions of the effective agreement, Mr. Harrell may be assigned to perform work on all seniority territories of the Missouri-Kansas-Texas Railroad.

On April 27, 1950, he was instructed by District Engineer R. C. Dunlay to report to Muskogee, Oklahoma as of May 1, 1950, to assume duties with the Electric Welding machine. During the months of May and June, 1950, Mr. Harrell worked out of Muskogee and during this period, his meals and lodging were not furnished by the Railroad and he was not accompanied by outfit cars. It was therefore, necessary for Welder Harrell to incur expenses for meals and lodging. During the month of May, these expenses totaled \$69.75 and during the month of June, they totaled \$71.95.

Because of the Carrier's failure to provide Mr. Harrell with outfit car or with meals and lodging in lieu thereof, the Brotherhood contended that he should be reimbursed for the expenses incurred.

Claim was declined.

The agreement in effect between the two parties to this dispute dated September 1, 1949, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

always worked under the direction of and reported to the division officers on whose division they are working. Each division is responsible for its own maintenance and these employes do not receive instructions from or report to the Engineer Maintenance of Way in connection with their activities, but in all cases receive instructions from and report to division officers of the respective divisions on which they are employed. Therefore, on the basis of Mr. Jones' contention in his letter of August 3, 1950, to the undersigned that the headquarters of the highest designated authority who has control over their activities is the home station of these employes when outfit cars are not furnished, the division headquarters of the Division Superintendent, the highest designated authority who has control over their activities, and not the headquarters of the Engineer Maintenance of Way, would be the home station of these employes while employed on their respective divisions.

Rules 2 and 3 of Article 11 of the agreement in effect prior to September, 1, 1949, the effective date of current agreement, are the only agreement rules cited by the Petitioner in support of these claims. These rules in the current agreement effective September 1, 1949, are included in Article 12 of that agreement and quoted on page 3 of this submission. These rules clearly and unmistakably apply only when employes are required by the directions of the Management to leave their home stations. These rules are not applicable in this instance as Mr. Harrell was not required to and did not leave his home station by direction of the Management, but was at his home station while employed as electric welder at Muskogee, Oklahoma, during May and June, 1950, for reasons shown and established in this submission. No basis for these claims therefore exists under these or any other rules of the agreement in effect on this property.

Claims for subsequent months are too vague, indefinite and uncertain for proper consideration, and are not supported by the rules of the agreement for the same reasons that claims for May and June, 1950, are not supported by the rules of the agreement. No information as to the pertinent facts regarding such alleged claims have been asserted or shown by the Petitioner. It is not asserted and shown when and where Mr. Harrell was employed in subsequent months, if at all, or on what basis claims for personal expenses in subsequent months are made. Claims of this character have been consistently denied by the various Divisions of the Board and for this reason and the fact that the agreement does not support them and no evidence of any kind has been submitted by the Petitioner to support these claims, they should be denied.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Claim here is for reimbursement for expenses allegedly due under Rules 1, 2 and 3 of Article 12, account of being assigned to, and required to perform service away from home station.

Claimant's home station prior to the date in question was admittedly Parsons, Kansas, a Division headquarters. On April 27, 1950 claimant received from Carrier the following instructions:

"We have advice from Engineer Maintenance of Way that it has been decided to reinstate both of you on the system seniority roster covering electric welding machines temporarily. This reinstatement

with system seniority may be permanent. They desire that both of you report at Muskogee, Oklahoma, Monday morning, May 1st, 1950, as the electric welding machine is located at that point, Mr. P. C. Harrell will advise his helper that the job is cut off effective as of the close of business Friday evening, April 28th, 1950. Please arrange accordingly."

Rules 1, 2 and 3 of Article 12 read as follows:

"Rule 1. Employes required by the management to travel on or off their assigned territory in boarding cars will be allowed straight time traveling during regular working hours, and for rest days and holidays during hours established for work periods on other days.

"Rule 2. Except as per Rule 1 of this Article, employes who are required by the direction of the management to leave their home stations, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station, will be paid for at the pro rata rate.

"Rule 3. If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours per calendar day when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not furnished by the railway, actual necessary expenses will be allowed. Employes will not be allowed time while traveling in the exercise of seniority rights, or between their homes and designated assembling points, or for other personal reasons."

The Organization asserts that Parsons, Kansas was claimant's home station and that the clear intent of the rule requires payment of expenses when an employe is away from his home station on instruction of his employer, and engaged in the performance of assigned duties.

The Respondent points out that the claimant was granted system-wide seniority; that Muskogee, Oklahoma is a Division headquarters; and that upon his arrival at Muskogee such point then and there became his home station, rendering the cited rules inapplicable.

It is further contended that in reinstating claimant to system seniority roster that it was contractually permissible to change, at the Carrier's option, the home station of the claimant to any place on the system.

There is no issue as to the correctness or the reasonableness of the amount of the expenses incurred so therefore the question to be resolved is whether or not claimant under the circumstances was "away from his home station."

It is undisputed that on April 27, 1950, the date of the above quoted communication from Respondent to claimant, that said claimant held seniority in the Parsons, Kansas, Division and that Parsons was then his "home station", within the meaning of the effective Agreement.

There can be no doubt that the Respondent instructed claimant to be at Muskogee on April 28, 1950, nor is it shown that claimant had the option of refusal. We conclude that he did not.

The instructions above quoted are clear that the Carrier's act of placing claimant on the system-wide roster was temporary and subject to revocation.

Under the circumstances claimant's "home station" continued to be at Parsons, and in proceeding to, and performing work at Muskogee, the claimant was at an "away from home station" within the meaning of the cited rules.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of May, 1952.