Award No. 6654
Docket No. SG-6490

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC LINES (INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY—GULF COAST LINES)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the International Great Northern Railroad-Gulf Coast Lines that J. W. Austell, Assistant Signalman, be compensated for expenses incurred during the months of August, September, October, November, and December, 1948, account of being assigned to a position away from his regular assigned headquarters of Signal Gang No. 1 during that period.

EMPLOYES' STATEMENT OF FACTS: Assistant Signalman J. W. Austell held a regularly assigned position on Gang No. 1. He had, however, been used away from his headquarters point as a Relief Signal Maintainer and Assistant Signal Maintainer for over a period of two years prior to the dates of this claim, for which he had always received expenses.

The position of Assistant Signal Maintainer at San Antonio, Texas, was bulletined as a permanent position on May 27, 1948. No applications were received for this position.

J. W. Austell had been working as a relieving Assistant Signal Maintainer and Signal Maintainer at Palestine, Texas, and on completing this assignment he was assigned to the position involved in this claim.

The position of Assistant Signal Maintainer at San Antonio, Texas, was rebulletined as a permanent position, under Bulletin No. 64-A, on November 13, 1948. The claimant, being the senior bidder, was assigned the position on December 13, 1948.

The claimant submitted his expenses on the usual expense forms, for expenses incurred while working the position of Assistant Signal Maintainer at San Antonio for the months of August, September, October, November, and December, 1948, which were denied by the Carrier, and the dispute was progressed up to and including the highest officer designated by the management to handle such cases, without reaching a satisfactory settlement.

There is an agreement in effect between the parties to this dispute bearing effective date of December 1, 1939, together with a revision bearing effective date of August 1, 1947, and Memorandum of Agreement bearing

as precedents for the information and guidance of the Board in its determination of this controversy. Therefore, this case must, of necessity, stand or fall on its own individual merit, or lack of merit. We submit that its obvious lack of merit under the provisions of either Rule 3 (u) or Rule 5 (j) supra, of the controlling Agreement leaves the Board with no alternative but to deny the contention and claim here presented.

In conclusion we think it appropriate and pertinent to here state that at no time in their handling of this case on the property have the Employes cited to the Carrier any rule in the Agreement to support their contention that claimant is entitled to the expenses as claimed. This fact is in itself, under the circumstances, considered significantly pertinent. In the absence of such a cited rule the Carrier is not in a position to, and for this reason cannot, here offer any discourse in this respect.

We are unable to even anticipate any logical or reasonable basis the Employes might assume in support of the claim. Certainly no such basis is to be found between the covers of the controlling Agreement. Conversely, the applicable provisions of the Agreement (Rule 3 (u), supra) plainly state "* * * that expenses will not be allowed under this rule for a longer period than ten (10) days." The explicitness of the rule should obviate any misunderstanding or misinterpretations of its meaning. It is sufficient to require denial of this claim.

Aside from and in addition to the foregoing, the attention of the Board is respectfully directed to the long and unexplained delay on the part of the Employes in submitting this case to the Adjustment Board. The period here involved for which claim is presented is in 1948, yet the claim was not presented to your Board until December, 1952, four years later. In Awards 4941, 5589, 5949, and others, this Division has recognized that there must be some limitation upon the period of time claims will be allowed to lie dormant before being appealed to the Board. The previous findings of your Board in this respect should be equally applicable in the instant case.

The substance of matters contained in this submission has been the subject of handling in correspondence and/or conference between the parties.

OPINION OF BOARD: This claim involves the right of an employe to expenses under Rule 3.

Claimant's headquarters were at Palestine. During the period covered by the claim he filled a vacancy at San Antonio on account of which the Carrier allowed and paid him expenses for 10 days under Rule 3 (u) which reads:

> "An employe when sent from home station to fill a temporary vacancy for one (1) day will be paid in accordance with Rule 3 (o); if for more than one (1) day he will be paid in accordance with Rule 3 (r-1), except that expenses will not be allowed under this rule for a longer period than ten (10) days. While filling such vacancy he will be paid for the hours worked at the established rate for the position, but at not less than his regular rate."

The claim is made for the entire period of several months during which Claimant filled the vacancy; and it is based on Rule 3 (r-3) which reads:

> "Actual necessary expenses will be allowed when away from headquarters."

If Claimant accepted this vacancy "in the exercise of his seniority rights," Rule 5 (j) would have disentitled him to any of the expenses claimed including the 10 days. There is some dispute about this in the record, but we pass the point because the Carrier acted and paid off under Rule 3 (u), not Rule 5 (j).

The ultimate questions presented are, therefore, whether Rule 3 (r-3) or Rule 3 (u) governs; and, if Rule 3 (u) governs, whether Claimant was "sent from home station to fill a temporary vacancy."

First. It is a familiar rule of contract interpretation that the specific provision controls the general (Awards 4959, 4988, 5213, 5220, 6003 and 6066). Rule 3 (r-3) is a rule of general application whereas Rule 3 (u) creates a specific exception when the employe is away from headquarters in the single situation when he is sent from home station to fill a temporary vacancy. Therefore, if Claimant was sent to San Antonio to fill a temporary vacancy, Rule 3 (u), not Rule 3 (r-3) governs.

Second. The argument is made by the Organization that, for the purposes of Rule 3 (u), a temporary vacancy can exist only when the incumbent of a position is temporarily absent. But there is nothing in Rule 3 (u) to indicate that any such restriction upon ordinary meaning was intended; and the bulletin rules (Rule 11 (b-3)) treat a vacancy pending permanent appointment as a temporary vacancy. Such was the vacancy here.

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

Rule 3 (u) governs the claim and Claimant was properly paid under it.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.