

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY—FORT WORTH AND DENVER
RAILWAY COMPANY (Burlington-Rock Island Railroad Company)**

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

(1) The Carrier violated the effective Agreement when it refused to reimburse Section Laborer J. R. Roberts for meal and lodging expense incurred while away from his headquarters at Normangee, Texas, performing service as a relief section foreman from July 1 to and including July 15, 1952, and from August 18 to and including August 30, 1952;

(2) Section Laborer J. R. Roberts be reimbursed for the cost of meals and lodging expense incurred while performing relief section foreman's service during the periods referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. J. R. Roberts, was regularly employed as a Section Laborer with headquarters at Normangee, Texas.

From July 1 to and including July 15, 1952, and from August 18 to and including August 30, 1952, the Claimant was away from his headquarters, at the Carrier's direction, performing temporary service as a relief section foreman.

The Claimant submitted a regular expense form, G-18, to the Carrier for each of the aboved referred to periods, itemizing the cost of meals and lodging expense incurred.

The Carrier has refused to reimburse the Claimant for the cost of meals and lodging expense incurred while away from his headquarters performing service as a relief section foreman during the aforementioned periods.

The Agreement in effect between the two parties to this dispute dated January 16, 1948, together with supplements, amendments, and interpretations thereto, are by reference made a part of this Statement of Facts.

than 60 days when he went to Streetman as relief section foreman and had seniority as a section foreman to protect.

In conclusion, the Carrier asserts that:

1. The Claimant accepted re-employment with the understanding he would be used as a relief section foreman, principally for vacation purposes, as contemplated by Section 6 of the Vacation Agreement.

2. The rules cited show the Claimant was entitled to choose whether or not to accept the vacancies and that his acceptance was an exercise of or a protection of his seniority rights under the agreement.

3. The Employees have recognized and concurred in the present application of Rule 36 for many years, which is persuasive evidence that they have not regarded it as a violation of the agreement.

It is, therefore, respectfully submitted that the claim is not supported by the applicable agreement and should be denied.

The Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employees.

(Exhibits not reproduced)

OPINION OF BOARD: On May 19, 1952, Claimant J. R. Roberts who had previously worked as a foreman for the Carrier, but who had left for other employment in 1951, returned and asked for re-employment. He was told that there was no current opening for a foreman, but as the vacation period was approaching he might be taken on as vacation relief man for section foremen. Claimant was anxious to start working immediately and offered to accept any relief work available. As a favor to him Claimant Roberts was permitted to start work at Normangee as a section laborer. The following were his assignments during the period in question:

Section Laborer, Normangee, May 19 to May 25, 1952
Machine Operator, On Line, May 26 to June 6, 1952
Section Foreman, Normangee, June 9 to June 27, 1952
Section Laborer, Normangee, June 30, 1952
Section Foreman, Corsicana, July 1 to July 15, 1952
Section Foreman, Normangee, July 16 to August 8, 1952
Section Laborer, Iola, August 11 to August 15, 1952
Section Foreman, Streetman, August 18 to August 29, 1952
Section Foreman, Richards, September 2 to September 5, 1952
Extra Gang Foreman, On Line, September 8, 1952

It is the contention of the Brotherhood that Claimant had seniority as a section laborer during the periods in July and August 1952, when he travelled from Normangee to Corsicana and Streetman where he had relief assignments as section foreman. Section 2 (a) of the parties' Agreement provides that:

"Except as otherwise provided in these rules, seniority begins at the time employee's pay starts." (Emphasis added)

Thus it is claimed that Roberts began on May 19, 1952 as a section laborer and his seniority was established in that category as of the date on which his pay started.

It is a generally accepted rule that when a new employee establishes his seniority it is made effective as of the initial date of his employment. But the majority of such collective agreements provide for a probationary period during which an employee has no established seniority. One must serve

some thirty, sixty or ninety days before he gets that seniority which when established becomes retroactive to "the time employe's pay starts".

The agreement which the parties have in the instant case is no exception to this general rule. Rule 2 (f) specifies that, ". . . The application (of a new employe) shall be approved or disapproved within sixty (60) days after applicant begins work . . ." And what is even more pertinent to the case now before us, Rule 12 (c) of the Vacation Agreement provides that,

"A person other than a regularly assigned relief employe temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year. If a person so hired under the terms hereof acquires seniority rights, such rights will date from the day of original entry into service unless otherwise provided in existing agreements."

It is clear from the record that Claimant Roberts was employed primarily to provide vacation relief for certain section foremen. His other assignments were merely fill-in periods. He did not have established seniority as a section laborer. For sixty days he had contingent seniority only. And during this period he worked in various capacities.

Rule 36 provides that,

"Employees will be reimbursed for cost of meals and lodging incurred while away from their outfits or headquarters by direction of the Company. This rule not to apply to mid-day lunch customarily carried by employes, nor to employes traveling in exercise of their seniority rights." (Emphasis added).

Since Claimant Roberts was hired as a vacation relief man for section foremen at different locations, it is questionable whether he had an "outfit or headquarters" of the sort that was contemplated in Rule 36. We think that a reasonable application of the rules involved in this case requires the Carrier to pay travel expenses of employes who are regularly assigned at one location, have seniority there, and for Carrier's convenience are assigned to duties away from their regular headquarters. But we do not find that an employe who was hired primarily for vacation relief for section foremen at different locations has a regular "outfit" or a specific "headquarters". And there has been no violation in this instance.

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 Employees involved in this dispute are respectively Carrier and Employers 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. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1956.