Award No. 10988
Docket No. MW-9999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY — LINES WEST —

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

(1) Carrier violated the Agreement when it failed and refused to allow travel time and expenses incurred by B&B Mechanic L. W. Horner while relieving B&B Foreman L. V. Argo during the period June 4, 1956 to June 22, 1956 inclusive.

(2) Carrier shall now be required to allow travel time and expenses submitted by B&B Mechanic L. W. Horner for the month of June, 1956 while relieving Foreman Argo of B&B Gang No. 1.

EMPLOYES' STATEMENT OF FACTS: As of June 1, 1956, the Claimant, Mr. L. W. Horner, held a regular assignment as B&B Mechanic on the New Mexico Division at Trinidad, Colorado. Acting in accordance with instructions given him by the Carrier, he temporarily left his assignment as a B&B Mechanic at Trinidad, Colorado and traveled to Mesquite, New Mexico for the purpose of relieving Foreman L. V. Argo, B&B Gang No. 1, while the latter was on vacation during the period June 4 to June 22, 1956 inclusive.

Following completion of such relief assignment, he submitted, on Carrier's form 1665-A, "Statement showing incidental expenses incurred during month of June, 1956," in the amount of $26.47 for travel time and a total of $77.07 for living expenses account of temporarily taken away from his regular assignment at Trinidad, Colorado to perform relief service at Mesquite, New Mexico. The expense sheets for the month of June were returned to him with advice that the claim for expenses was declined.

Claim was appealed up to and including the highest officer designated by the Carrier to handle such claims, and was declined at each stage of progress.

The Agreement in effect between the two parties to this dispute dated January 1, 1953, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

had the effect of validating claims under circumstances of the case in point. This in itself is acknowledgment this claim is denied by existing rules. This it is clear the Employes' claim now before you is a further effort to obtain such a rule by an award of this Board. A denial of the claim is clearly in order and is respectfully requested by the Carrier.

The Carrier is uninformed with respect to the arguments the Brotherhood will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and arguments as it may conclude are necessary in reply to the Brotherhood's ex parte submission or any subsequent oral arguments or briefs presented by the Brotherhood in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Horner held a regular assignment as B&B Mechanic with headquarters at Trinidad, Colorado. From June 4 to June 22, 1956, inclusive, he filled the position of a B&B Foreman, on vacation at El Paso, Texas, and Mesquite, New Mexico. This required Claimant to travel to and from El Paso. Incident to this service, Claimant submitted an expense account for meals and travel time which was returned to the Claimant, denying him the allowance of the expense account submitted.

It is the contention of the Claimant that in refusing to reimburse him for expenses incurred for meals and allowing him travel time in going from Trinidad to El Paso and return, the Carrier violated the Agreement, effective January 1, 1953, that the position of the vacationing Foreman was filled in accordance with Article 12(a) and (b) of the Vacation Agreement, reading as follows:

> "12. (a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu therefor under the provision hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employe on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.
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> (b) As employes exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority."

Claimant further contends that he was sent away from his home station when he was sent out to protect the position of the vacationing Foreman and that Article VI, Section 27-(a), (b) and (c) providing the manner of compensating employes when they are taken away from their

assigned territory to work elsewhere should be applied in the instant case. Article VI, Section 27, provides, as follows:

"Work Away From Headquarters

"Section 27-a. Employes sent out on the road for service from home station (outfit cars to be considered home station when on the road) shall be paid while working, according to rules for regular assignment, with not less than eight hours each day. When waiting or traveling they shall receive straight time, except that no time will be allowed between 10:00 P. M. and 7:00 A. M. when sleeping accommodations are furnished and an opportunity for five hours or more sleep is afforded.

After arriving at point where work is to be performed, and in the event that work is not completed and will be resumed the following day, and if sleeping accommodations are available, time outside of regular working period hours not actually worked will not be considered as waiting or paid for under this rule.

When meals and lodging are not provided by the Company, actual necessary expenses will be allowed.

Section 27-b. Employes taken off their assigned territory to work elsewhere, will be furnished meals and lodging by the Company, if not accompanied by their outfit cars. This rule not to apply to employes customarily carrying midday lunches, and not being held away from their assigned territory an unreasonable time beyond the evening meal hour. This rule will also not apply to employes temporarily transferred under Sections 9 and 12-a of Article II.

Section 27-c. Employes regularly assigned to road work will be allowed necessary actual expenses when sent or used away from headquarters or outfit cars.

(Note: For Bridge and Building and Paint gang employes regularly assigned to outfit cars, the word 'headquarters' as used in this section means the outfit cars in which the foreman of the gang resides.)"

Conversely, however, Carrier maintains that the temporary vacancy of the B&B Foreman was filled pursuant to Article III—Section 4-b of the basic Agreement which is, as follows:

"Section 4-b. Temporary vacancies of thirty (30) days or less that are to be filled may be filled without bulletining, by advancing or recalling the senior available qualified employe of the class actually working on the seniority district in a lower class or out of service in force reduction and holding rights to recall, except that employes with seniority as section foreman or assistant section foreman will not be required or permitted to protect temporary vacancies of thirty (30) days or less as section foreman or assistant section foreman while working or assigned as extra gang foreman, assistant extra gang foreman or roadway machine operator. Other than employes covered in the foregoing exception, employes available on the seniority district who fail

to respond to call for temporary service, under the provisions hereof, will forfeit their seniority in the class in which the vacancy occurs. The employe affected and the Division Chairman of the Brotherhood will be notified in case of loss of seniority under the provisions of this rule."

Carrier urges that in accepting this position, a higher rated position, the Claimant was in the exercise of his seniority and in performing the service had to do so without expense to the Company, as he is bound by Article II, Section 16 of the Agreement:

"Section 16. Employes accepting positions in the exercise of their seniority, will do so without expense to the Company."

Our primary problem, then in resolving this controversy, is: "Was the Claimant in accepting this assignment to relieve the vacationing Foreman, who was in a higher seniority bracket, in the exercise of his seniority?" This vacancy was not bulletined nor did the Claimant apply for the assignment. Claimant was directed to protect the position of the Foreman while he was on vacation in recognition of his seniority rights as required by the rules. This was merely a compliance by the Carrier with the seniority rules and does not constitute the exercise of seniority rights by Claimant. Claimant was under some compulsion to accept the assignment as the provisions of Article III — Section 4-b make his refusal to honor a call a forfeiture of seniority — a valid right.

This assignment required temporary service away from Claimant's headquarters and Article VI — Section 27 is controlling and provides for re-imbursement to the employe for expense incurred for meals and lodging and, also, includes travel time, as the rule provides he shall receive straight time when "waiting or travelling."

In a prior controversy between these parties, — Award 5488 (Wyckoff) — similar rules and principles were involved and discussed and a decision was arrived at sustaining the claim. That decision was not palpably erroneous and we can find no reason for departing from it as a precedent.

Claimant, therefore, is entitled to expenses in accordance with Article VI — Section 27 of the basic Agreement and in accordance with Article 12 of the Vacation Agreement.

The amount allowed should be consistent with the expense account submitted by the Claimant on the property.

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 has been violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1962.