

Award No. 12334

Docket No. MW-11700

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL 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 allow Trackman D. O. Daigre eight hours' straight time pay for time consumed in going from and to his headquarters at Port Gibson, Mississippi, on January 23, 1958 and February 7, 1958 in connection with a Relief Section Foreman's assignment at Sibley, Louisiana.

(2) Trackman D. O. Daigre now be allowed eight hours' straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. D. O. Daigre was regularly assigned to the position of Trackman with headquarters at Port Gibson, Mississippi.

On January 22, 1958, the claimant was directed and assigned to relieve the regular Section Foreman at Sibley, Louisiana, effective as of January 23, 1958.

Since passenger train service was not available, the claimant used his personal automobile and consumed four hours in advance of and four hours following the regular work period on January 23 and February 7, 1958, in going from and returning to his regular headquarters and Sibley, Louisiana.

Although the claimant was allowed automobile mileage and meals and lodging expense in the amount of \$77.88 covering the period from January 23 through February 7, 1958, the claimant was advised in a letter dated February 17, 1958 that the time consumed in going from and returning to his regular headquarters and Sibley, Louisiana, on January 23 and February 7, 1958 was disallowed and eliminated from the time rolls.

Consequently, the subject claim was presented and progressed in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

recognized as coming under the travel time pay provisions of Rule 41(b). Should the Organization attempt to do here what it did in the identical case now pending before the Board under Docket MW-10784—remain silent until its last written argument to the Board and then assert the practice in dispute to be diametrically opposed to the facts—the Board should consider the assertion as belated and improperly before it.

SUMMARY

The Carrier submits that it has shown that the travel time pay requested here is not justified because:

(1) Rule 41(d), the special rule which covers Track Department employees filling temporary Section Foremen's vacancies, provides for expenses and transportation for such employees and nothing more.

(2) Rule 41(b), the travel time pay rule, specifically excludes from its provisions employees who are (1) covered by Rule 41(a), and (2) not required by the direction of management to leave their home station. Daigre was excepted by both conditions; he was covered by Rule 41(a) and was not required by the Carrier to fill the vacancy, but instead elected and was permitted to fill the vacancy by virtue of his seniority.

(3) Track Department employees filling temporary Section Foremen's vacancies per Rule 41(d) have never been recognized as coming under the provisions of Rule 41(b), and this historical interpretation and application of the rule has been without prior complaint except for the case, previously mentioned, covered by Docket MW-10784.

The claim is totally without merit and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Senior Section Laborer, D. O. Daigre, filled a temporary vacancy of Section Foreman at Sibley, Louisiana, during the period from January 23, 1958 to February 7, 1958. He traveled four hours to reach his assignment at Sibley and four more hours after the completion of the work to return to Port Gibson, Mississippi, his regular headquarters. Carrier allowed him automobile mileage and meals during the travel times.

Petitioner relies on Rule 41 to sustain his claim for payment for the eight hours consumed in traveling to and from the relief position.

Award 11442, which concerned an identical dispute and the same parties, sustained the claim. In the instant case Carrier reiterates the contentions submitted in that dispute, but in addition, it urges that the claim be denied because under past practice, Rule 41 has never been interpreted to allow payment for time consumed in traveling under similar circumstances. Claimant, on the other hand, argues that since the exhibits presented as evidence of the practice were not introduced during the handling of the claim on the property, they should not be considered by the Board. Moreover, he points out, that even if considered, the exhibits are not significant, because they do not provide evidence directly related to the situation under consideration.

We are not convinced from the record that Carrier has clearly established the existence of a past practice which does not allow payment for travel

time under similar circumstances. After consideration of the other contentions presented by Carrier, urging its application of Rule 41, we find that we are in agreement with the interpretation of that Rule enunciated in Award 11442. Accordingly, we also hold that the Agreement was violated, and the claim has merit.

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 Employees 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

Agreement was violated.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12334, DOCKET MW-11700

Referee Engelstein

The record clearly supports carrier's statements regarding past practice; however, such practice is unnecessary to deny this claim.

Under the clear provisions of Rule 41 (d), only those "who desire to fill" temporary vacancies could be used. Petitioner never disputed the fact that claimant had a free choice and in the exercise of that choice, voluntarily filled the vacancy, thereby exercising his seniority which precluded him from the provisions of Rule 41 (b), even if erroneously held that Rule 41 (d) was inapplicable.

The dissent to Award 11442 is hereby adopted and made a part of this dissent.

For these and other reasons, Award 12334 is in error, and we dissent.

W. M. Roberts
G. L. Naylor
R. A. DeRossett
R. E. Black
W. F. Euker