

Award No. 13846

Docket No. MW-14690

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel Kornblum, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow Welder B. K. Golden \$90.55 for meal and lodging expenses incurred by him in July and August, 1962, while filling a temporary vacancy at Memphis, Tennessee. (Carrier's File 134-311-506. Case No. 268 MofW).

(2) The Carrier violated the Agreement when it failed and refused to allow Welder R. A. Williams \$21.95 for meal and lodging expenses incurred by him on July 9, 10, 11, 12 and 13, 1962, while filling a temporary vacancy at Memphis, Tennessee. (Carrier's File 134-311-506. Case No. 275 MofW).

(3) Welder B. K. Golden be allowed \$90.55 because of the violation referred to in Part (1) of this claim.

(4) Welder R. A. Williams be allowed \$21.95 because of the violation referred to in Part (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. A. Williams was regularly assigned to a welder's position with headquarters at Dyersburg, Tennessee, although he resided at Fowlkes, Tennessee. On Friday, July 6, 1962, his position was abolished. There were no junior welders employed on the Tennessee Division whom Mr. Williams could displace. However, he held seniority as a section laborer as of July 10, 1950, on his home seniority district, and he intended to immediately displace a junior section laborer employed near his home. Before Mr. Williams could displace, he was instructed on July 7, 1962, to report to Memphis, Tennessee, for the purpose of relieving vacationing Welder Helper Sanders, who was a helper to Welder J. B. Springs. Mr. Williams relieved on said position on July 9, 1962. On Tuesday, July 10, 1962, Welder Brockwell displaced Welder J. B. Springs, and then immediately laid off to apply for his annuity. Mr. Williams was then directed to fill the vacancy in this welder's position on July 10, 11, 12 and 13, 1962. On July 16, 1962, a combination Welder's position was bulletined at Dyersburg, and Mr. Williams was assigned to fill that position pending award. He was subsequently awarded this position at Dyersburg.

This Board in its Award No. 7305, Maintenance of Way Employees v. the joint Texas Division of Chicago, Rock Island and Pacific Railroad Company--Fort Worth and Denver Railway Company, interpreted a rule similar to that here involved and stated:

"We think that a reasonable application of the rules involved in this case required the carrier to pay travel expenses of employees who are regularly assigned at one location, have seniority there, and for carrier's convenience are assigned to duties away from their regular headquarters."

In the two claims before the Board, the employees accepted temporary assignments with headquarters at Memphis, Tennessee, and worked at that location on each of the claim dates. It follows that such employees are not entitled to such expenses under Rule 39 (a) for the simple reason they were not required to stay away from their regular assigned headquarters overnight.

SUMMARY

The company has shown that the employees' claim before the Board is without contractual basis because they were displaced from regular assigned bulletin positions and were not entitled to expenses while filling temporary assignments. It has shown that the claims are invalid because (1) the claimants were displaced from their bulletined positions as result of a force reduction and were unable to displace junior employees in the same class because there were none working as welder or welder helper, (2) when they accepted temporary work at Memphis, they assumed the headquarters point of the position to which assigned, (3) they were not required to stay away from their regular assigned headquarters overnight and, therefore, are not entitled to expenses under Rule 39 (a).

The claim is entirely without contractual basis, and it should be denied in its entirety.

OPINION OF BOARD: This claim involves the interpretation and application of Rule 39, paragraph (1) of the Agreement which in relevant part provides:

"Employees filling temporary vacancies of less than 30 days' duration required to stay away from their regular assigned headquarters overnight, will be allowed not to exceed \$5.00 per day expenses."

Irrespective of the differing interpretations placed on the Rule by the parties, both sides are in agreement that for the Rule to apply at all the affected employee must have a "regular assigned headquarters" to begin with. In other words, for the rule to come into operation, the temporary assignment in question must be taking the employee away overnight from such headquarters. It follows that a lack of this factor would require dismissal of a claim.

Petitioner contends that this factor is satisfied in the situation where the employee on temporary assignment has been displaced from his regular job or that job has been abolished, so long as his seniority rights would entitle him to displace a junior employee at the regularly assigned headquarters. But concedely even if this construction of the Rule were adopted and applied in this case the claim of employee Williams (Items 2 and 4 above)

would have to be dismissed. The undisputed facts in this record are that this employe, whose regular job had been earlier abolished, had no one junior in the service at his former headquarters whom he could displace. Accordingly, Items 2 and 4 of the claim are denied.

The Carrier's interpretation of the Rule is that employes displaced from their regular positions and who thereafter fill temporary assignments take the headquarters of the temporary position worked. In this view the fact that the affected employe had seniority rights which might have allowed him to displace a junior employe at the headquarters of his former regular job are irrelevant to the Rule in issue; his former headquarters are replaced by those of his given temporary assignment.

While the Petitioner's interpretation of the Rule finds some support in the past precedents of this Division (see, e.g., Awards 5293, 6252), the proof in the claim of employe Golden (Items 1 and 3) does not show that his temporary assignment ever took him away from his "regular assigned headquarters" within the meaning of the Rule. According to Petitioner's ex parte submission, this Claimant "was displaced from a regularly assigned welder's position in Gang 306 on July 9, 1962." (Emphasis ours.) The "regular assigned headquarters" of this Gang was in Memphis, Tennessee. It remains that when this Claimant returned to work after his vacation from July 9 to 21, 1962; he immediately went back to the same position on the Gang from which he had been displaced. And since August 21, 1962, he has held this job on a permanent basis, rather than a temporary one as before. The situs of the "regular assigned headquarters" of this Gang remained in Memphis, Tennessee, during all the time in question. It is clear, therefore, that this Claimant was not required to stay away from his "regular assigned headquarters." Items 1 and 3 of the Claim are accordingly denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1965.