

Award No. 15001

Docket No. MW-15874

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC 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 reimburse Mr. Marvin Wolter for meal and lodging expenses incurred while relieving the regular assigned section foreman at Lincoln, Nebraska from November 19 to November 30, 1962 inclusive and from December 3 to December 15, 1962. (Carrier's file No. 1-126-815).

(2) Mr. Marvin Wolter now be paid \$117.40 to reimburse him for the meal and lodging expenses referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant is a regularly assigned section laborer whose home station is at Jansen, Nebraska. He was directed to relieve the regularly assigned section foreman at Lincoln, Nebraska from November 19 to November 30, 1962 inclusive and from December 3 to December 15, 1962. The Carrier did *not* provide the claimant with meals and lodging at Lincoln, Nebraska. Hence, it was necessary that the claimant incur expenses in obtaining same.

From November 19 to November 30, 1962, the claimant incurred expenses for meals and lodging totaling \$57.85. From December 3 to December 15, 1962, he incurred expenses totaling \$59.55. The claimant submitted properly executed Expense Forms G-18 for the months of November and December for reimbursement of the aforementioned expenses. The Carrier refused to allow same.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer. The parties agreed to several extensions of time within which to institute proceedings with this Division. At the final conference held in connection with this dispute on February 10, 1965, the Carrier's highest appellate officer agreed to extend the time limit for the institution of proceedings to September 1, 1965.

The Agreement in effect between the two parties to this dispute dated May 1, 1938, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

work should be located at certain defined points where they can take care of work that can reasonably be handled by the one or more men regularly employed in this road work and not required excessive hours traveling to and from points where work is performed, or to points where material or tools are available.

Employees so assigned will be paid ten (10) hours' time for eight (8) hours' service and where it requires more than eight (8) hours of actual work, the time put in on actual work in excess of eight (8) hours, should be reported as overtime and the employees receive the two (2) hours extra per day in lieu of expenses for meals and lodging.

"EXAMPLE. A water service man goes for a repair job on a train in the morning and he may go to one point and do a couple of hours' work. He may then catch another train and go to another point and do some more work and, possibly, may be held away from headquarters ten (10) or twelve (12) hours but he has not done eight (8) hours actual work, but he would get ten (10) hours' time. If, however, he went out in another case in the morning to a job that took him nine (9) hours continuous work to complete, he would receive ten (10) hours time for the eight (8) hours actual work and overtime for the extra hour that he actually worked in excess of eight (8) hours. As a rule, these men will get back to headquarters every night, but, occasionally, they may have to be out overnight and for this reason provision is made that employees in this class of service will furnish meals and lodging at their own expense.

It is not intended that an entire gang of men working under a foreman will be assigned to traveling jobs and individual members of the gang be alternately used in taking care of road work, but sufficient individuals will be assigned to take care of all road work, each to have a certain territory to take care of with certain specified headquarters located in that territory, and if additional men are required they will, likewise, be assigned to road work, temporarily or permanently, as assistants to the men already assigned, but not for a day or two at a time, to take care of emergency work such as wrecks, washouts or equipment failures.

The men assigned at outlying points may, for accounting purposes, be required to transmit their time to the foreman of one particular gang and the foreman of that gang will have general supervision over the road work.

Section (c) is intended to cover employees who may in an emergency be called out to perform work on or off their regular assigned territory and held away from their home or regular boarding or outfit cars. This would apply particularly to men called out to washouts, burnouts, wrecks and emergency repair work on stock yards, coal chutes, water stations, bridges, etc."

OPINION OF BOARD: This is a claim for reimbursement of meal and lodging expense incurred while relieving a regularly assigned section foreman.

Claimant was a Section Laborer at Jansen, Nebraska. From November

19 to November 30 and from December 3 to December 15, 1962, he relieved the Section Foreman at Lincoln, Nebraska.

Claimant, through the Organization, contends that he was directed to fill the foreman's position during the dates involved, and, under the provisions of Rule 34(c) of the Agreement, he was entitled to reimbursement for meals and lodging. As such, Claimant was still headquartered at Jansen, Nebraska, and that filling such position was in recognition of his seniority and not in exercise of it.

Carrier, in denying the claim, contends: 1) That Claimant was not "required" by Carrier to fill the position because Claimant had the choice of whether or not to accept the assignment even though he was "requested" by Carrier to fill the position, 2) That Claimant chose to fill the vacancy "in the exercise of his seniority rights", and 3) That during this period, Claimant's home station changed from Jansen to Lincoln.

The relevant portions of Rule 34(c) are set forth as follows:

"Employees . . . who are required by the direction of management to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. . . . Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed.

"INTERPRETATION:

"Section (c) is intended to cover employees who may in an emergency be called out to perform work on or off their regular assigned territory and held away from their home or regular boarding or outfit cars. This would apply particularly to men called out to washouts, burnouts, wrecks and emergency repair work on stock yards, coal chutes, water stations, bridges, etc."

As a preliminary matter, we are satisfied, pursuant to Award 4542 and others, that the Interpretation of Rule 34(c) is not limited to emergency situations. We are further satisfied, as a general proposition, that Rule 34(c) is applicable to the facts in this dispute. (See Awards 486 and 4542.)

The specific question before the Board is whether the Claimant was "required" by the Carrier to fill the position, in the sense that he had no choice but to fill it and therefore entitled to be reimbursed under the provisions of Rule 34(c).

A number of Awards have been decided by this Board on the question. They have been carefully analyzed by Referee Stark in Award 12003. That Award points out that the following principles emerge: (1) "When an employee receive a temporary assignment by virtue of his contractual seniority rights, and he has no real choice regarding the acceptance of such assignment, he is not exercising his seniority; (2) If he bids off a position, or uses his seniority to displace another man in a different location, he is exercising his seniority; (3) If he has a real choice in accepting or rejecting a temporary assignment he is exercising his seniority when he makes his decision."

In Award 13234 (Hall), this Board said:

"The distinction between 'recognition of an employee's seniority rights by a Carrier' in directing a working force and 'the exercise of seniority rights by an employee' is whether or not an employee accepts an assignment by Carrier on his own volition or by his own choice or whether he does not."

An examination of the Record in the instant dispute indicates that Claimant was "sent" by Carrier to Lincoln (letter of claim dated January 12, 1963); and that Carrier's highest appellate officer stated at a conference that Claimant could have refused to perform the subject relief work.

Absent probative evidence in the Record that Claimant was without choice or under compulsion to fill the position, and absent any provision in the Agreement that it would be detrimental to Claimant not to fill the position (as in Awards 10988 and 12003), we find that Claimant has failed to show that filling the position was in recognition of seniority and not an exercise of seniority.

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 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

That the Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.