Award No. 16514
Docket No. TE-15598

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Missouri Pacific Railroad (Gulf District), that:

1. The Carrier violated the Linemen's Agreement when on January 3, 1964, as per your letter of that date, file 220:122, it refused to allow Relief Line Gang Construction and Maintenance Foreman H. H. Bowman, expenses incurred December 16th through 27th, 1963, while performing duties in that capacity.

2. Carrier shall allow expenses of H. H. Bowman for December 16th through December 27, 1963, in the amount of $70.11 total.

EMPLOYES' STATEMENT OF FACTS: Relief Line Gang Construction and Maintenance Foreman H. H. Bowman relieved the regular Foreman B. P. Daniels for vacation December 16 through 27, 1963. The regular Foreman Daniels was permitted by the Carrier to reside in hotels or rooming houses and take his meals wherever he chose at each point the line gang bunk cars were stationed. The Carrier paid his expenses in connection with his board and room. When Relief Foreman Bowman assumed the position of Mr. Daniels, he elected to stay in hotels and rooming houses and take his meals at outside restaurants instead of remaining in the bunk car and having his meals there. At the time in question the bunk car was stationed at Eunice, Lawtell, and Opelousas, Louisiana, on the DeQuincy Division of the Missouri Pacific Railroad.

Claimant Bowman tendered his expense account for the month of December in the amount of $70.11. The Carrier did not object to the amount involved, but took the position that claimant was assigned to the bunk car and he was not entitled to personal expenses while relieving Foreman Daniels for his vacation in December. The claim was appealed to the highest officer, and declined by him. The claim is now properly before your Board for final adjudication.

Dear Sir:

Reference to your letter dated April 25, 1964, file Linemen No. 4, appealing from decision of General Manager D. J. Smith claim on behalf of Lineman H. H. Bowman for expenses in the amount of $70.11 for the period December 16 through 27, 1963, while relieving Foreman B. P. Daniels.

The claim is predicated on the Employes' contention that claimant is entitled to expenses for not living in the bunk car because the regular assigned foreman had been allowed expenses.

The District Chairman was advised by Superintendent of Communications J. C. Morrow that the only reason the regular assigned foreman received expense allowance was because of the fact that there was no space for him in the bunk car, and no bunk car was furnished. Such was not the case with Mr. Bowman who already had space in the bunk car.

There is no rule of the Agreement which permits the foreman to choose expenses rather than the assignment to quarters in the bunk car; therefore, claims for expenses are hereby declined.

Yours truly,

/s/ B. W. Smith"

The Employes rejected the decision of the Director of Labor Relations, requested conference, which was granted by the Carrier July 30, 1964, however, no new facts were developed during discussion of the dispute whereby Carrier, under date of July 31, 1964, acknowledged the conference and declined the claim. Under date of September 3, 1964, the Employes notified the Carrier that the final decision of the Director of Labor Relations was rejected and it was their intention to submit claim to your Board.

OPINION OF BOARD: Claimant, an hourly rated employe, relieved his regular foreman, a monthly rated employe, for vacation 16 through 27 December, 1963. The regular foreman was permitted by Carrier to stay in rooming houses and take his meals wherever he chose at the points the line gang bunk cars were stationed. Carrier paid said foreman's expenses in connection with his board and room but refused to pay such expenses of Claimant on the grounds that he was assigned to the bunk cars and that there was no rule in the Agreement requiring such reimbursement.

There is nothing in the Agreement or the Record which clearly fixes the place of the regular foreman's headquarters or home station. Rule 8 (e) making the bunk cars the headquarters or home station for the gang applies to hourly rated employes and does not apply to the foreman. There being no exception regarding monthly rated employes, we must conclude that the regular foreman's headquarters or home station was, in accordance with its most common meaning, not the gang cars but the point on Carrier's line from which the foreman and the gang originated.

Carrier contends that under Rule 8, parts (e) and (f), it is not obligated to make the payments and that same require Claimant to headquarter in the bunk cars. However, as hereinbefore suggested, a perusal of Rule 8 in its entirety, discloses that same deals with only hourly rated employes.

The Organization presses Rule 2(g) which prohibits Carrier changing an employe's classification in a fashion that would effect ". . . a less favorable rate of pay or condition of employment." The bunk cars not being the headquarters of Claimant's regular foreman it becomes apparent that Carrier's payment of expenses to said regular foreman was not a gratuity but an obligation under Rule 7(b) and that the job classification, under Rule 2(g), could not, merely because Claimant was relieving said regular foreman while on vacation, be changed, directly or indirectly, whereby it would effectuate ". . . a less favorable rate of pay or condition of employment." Distinguish Awards 3477 (Bailer), a Second Division award, and 9581 (Johnson).

The hereinbefore mentioned Rule 7(b) provides that monthly rated employes will be allowed expenses when away from headquarters. Claimant in his relief capacity, is a monthly employe but it appears that there is a specific contract provision limiting the impact of Rule 7(b) when hourly employes act in relief capacities. Same is Rule 8(j) and provides as follows:

> "(j) An hourly rated employe required to perform relief service will be paid at the rate of position where relieving, but not less than his regular rate, and in addition thereto actual necessary expenses while performing such relief service, **except that expenses will not be allowed for a longer period than ten (10) days.**" (Emphasis ours.)

It is readily apparent that where Carrier was obligated to pay for the expenses of the regular foreman, it was also obligated under Rule 2(g) to pay the expenses of the relief foreman, Claimant herein, except where limited by the Agreement or by mutual consent of the parties. Here, there is no mutual consent to alter the Agreement and the only limitation is within the Agreement, Rule 8(j), i.e., the allowance of such expenses shall not exceed ten (10) days.

The first ten (10) days of expenses incurred by Claimant must be paid by Carrier but the remainder of the claim should be disallowed.

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 violated.

AWARD

Claim sustained as herein modified.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1968.

CARRIER MEMBERS' DISSENT TO AWARD 16514
DOCKET TE-15598

The majority's decision to allow the first ten days of expenses incurred by Claimant H. H. Bowman has no sound basis in fact or logic. It is based in large measure on misinterpretation or misapplication of contract language, non-existent or irrelevant facts and invalid or unsupported conclusions and assumptions.

To begin with, the majority fails to put Bowman's claim in proper perspective when it omits from its recitation of the facts the reason why the Carrier permitted the regular foreman to incur, and reimbursed him for, meal and lodging expenses at the points the communications gang's outfit and boarding cars were stationed on Carrier's line of road. If the majority had been interested in putting the claim in its proper perspective, it would have noted that the regular foreman was allowed these expenses because the gang, including the regular foreman, totaled nine men and the outfit and boarding cars to which the gang was assigned were equipped with bunks and other facilities for only eight men. The majority should also have noted that, during the time the regular foreman was on vacation in this case, the gang, including Claimant Bowman in his role of relief foreman, totaled only eight men; the lineman's position vacated by Bowman was not filled during that time.

The evidence of record thus establishes that the outfit and boarding cars to which Claimant Bowman was assigned were equipped to accommodate both himself and the seven men he supervised during the time in question, making it unnecessary for him to live elsewhere. Despite all of this, however, Bowman took it upon himslf to decide he would not live in the gang's outfit and boarding cars during the regular foreman's absence and incurred, without authorization by the Carrier, the meal and lodging expenses in question.

The location of the regular foreman's headquarters or home station, about which the majority engages in needless speculation, is completely irrelevant and immaterial to the issue raised in this case. What difference does it make wehre the regular foreman's headquarters or home station was located? The question presented here was whether the Carrier was contractually obligated to reimburse Claimant Bowman for the meal and lodging expenses he incurred, so it is the location of Bowman's headquarters — not the regular foreman's — with which the majority should have been most concerned.

In any event, the majority's conclusion that the regular foreman's headquarters was "not the gang cars but the point on Carrier's line from which the foreman and the gang originated" is contrary to the facts of record. In reaching such a conclusion the majority does little more than demonstrate the hurried and strained manner in which it obviously reasoned Bowman's claim should be sustained.

If the majority had paid more attention to the record than it apparently did, it would have found more than adequate grounds for fixing the location of the regular foreman's headquarters at the place the gang's outfit and boarding cars were stationed: (1) the record clearly indicates that the communications gang was assigned outfit and boarding cars and was working on the Carrier's line of road; and (2) on page 1 of the Carrier's initial submission it is stated, without contradiction by the Organization, that "When a communications gang is assigned to work on line of road, the Carrier may assign

outfit and boarding cars **which serve as the headquarters and home station for forces employed 'in such gangs.'** " (Emphasis ours.)

The factors which fixed the location of the regular foreman's headquarters at the point on Carrier's line of road at which the gang's outfit and boarding cars were stationed also fixed the location of Claimant Bowman's headquarters at the points those cars were stationed during the time in question in the instant case. This, coupled with the majority's finding that Bowman was a monthly rated employe during such time, should have caused the majority to realize the Carrier was specifically relieved of any obligation to reimburse him for the meal and lodging expense claimed by Schedule Rule 7(b):

"RULE 7.

MONTHLY RATED EMPLOYES

* * * * *

(b) Monthly rated employes will be paid regular rate to cover all time whether working, waiting or traveling, **actual necessary expenses will be allowed when away from headquarters.**"
(Emphasis ours.)

Schedule Rule 2(g), which the majority cites in the fourth paragraph of its opinion, reads as follows:

"RULE 2. CLASSIFICATION

* * * * *

(g) The entering of employes in the positions occupied in the service or changing their classification or work shall not, except by mutual agreement between the Management and Committee, operate to establish a less favorable rate of pay or condition of employment **than is herein established.**" (Emphasis ours.)

The majority grossly understates the case when it says the Organization pressed the application of Rule 2(g) in support of Bowman's claim. It would have been much more accurate to say that this was the only rule pressed by the Organization in support of the claim.

The Organization's sole argument in support of Bowman's claim, both on the property and before this Board, was summarized in a single paragraph on page 5 of its initial submission.

"The Employes pointed out that Rule 2 (g) protected Claimant Bowman in that he could not have the conditions of the position changed without negotiation by Management and the Committee which would establish a less favorable rate of pay or condition of employment. The Employes took the position that one of the conditions of the position was the Foreman's right to live away from the bunk car and obtain his personal expenses by reimbursement."

There is, of course, a fatal defect in this argument which becomes readily apparent as soon as it is noted the last four words in Rule 2(g) require that the conditions of employment of a position be established in the Agreement. The Organization did not cite, nor can it cite, any provision in the Agreement which even remotely suggests that the "right to live away from the bunk

car and obtain * * * personal expenses by reimbursement" is a "herein established" working condition or right of either regularly assigned or relief foremen on communications crews. Indeed, the above-quoted provisions of Schedule Rule 7(b) specifically deny such a right to foremen and all other monthly rated employes in situations like that involved in the instant case.

The majority, in its rush to sustain Bowman's claim, either overlooked or conveniently ignored the significance of the last four words of Rule 2(g). This is made clear by the fact that its opinion, like the Organization's argument, emphasize only the words " * * * a less favorable rate of pay or condition of employment * * * " in that rule.

After finding (1) that Claimant Bowman was a monthly rated employe during the time in question, (2) that "a perusal of Rule 8 in its entirety, discloses that same deals only with hourly rated employes," and (3) that the provisions of Rule 8 cited by the Carrier as part of its defense against the instant claim are inapplicable because they apply only to hourly rated employes and not to foremen such as Bowman, the majority completely reverses its thinking and summarily concludes that the first 10 days of Bowman's expenses are allowable under Rule 8(j), a rule which begins with the words "An hourly rated employe" and is as much a part of Rule 8 as those provisions previously found to be inapplicable. Such action by the majority can only be described as irrational and irresponsible, it can be explained only in terms of emotion.

Once the majority tells us Rule 8(j) is applicable to the case, it commits further error by failing to reconcile the language of that rule with the facts of record. Specifically, it fails to offer any explanation as to how Claimant Bowman's meal and lodging expenses can be considered "necessary expenses" when the record so clearly establishes that the Carrier supplied him with sleeping and eating facilities in the gang's outfit and boarding cars.

Another thing that makes the majority's decision even more objectionable is the fact that at no time during the handling of the claim on the property or in the submissions filed with this Board did the Organization even so much as suggest that Rule 8(j) supported Bowman's claim in any way. The majority seized and relied upon Rule 8(j) on its own motion and thereby denied to both the Carrier and the Organization the opportunity to state their respective positions on that rule's applicability to the case. This very same majority has stated in other cases that this Board should consider and apply only those parts of a collective bargaining agreement which the record shows were made a part of the issue on the property by the parties because to do otherwise would expunge the clear mandate of Congress in forming this Board, i.e., that the parties exhaust every avenue of settlement before appealing hereto.

Accordingly, we dissent to the majority's decision to allow the first 10 days of expenses claimed by Claimant Bowman.

C. L. Melberg
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C. H. Manoogian
J. R. Mathieu

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