

Award No. 17103

Docket No. MW-17616

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Gene T. Ritter, 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 Agreement, when, beginning on May 16, 1966, it assigned the members of Extra Gang 200 to perform the work of replacing ties on the Mississippi Central Railroad and failed and refused to pay them for travel time, car mileage and necessary meal expenses incurred. (System Case No. 420/M1-58-T-66)
- (2) The Claimants * shall be paid for travel time and mileage for traveling between their assigned headquarters on the Illinois Central Railroad and the camp cars on the Mississippi Central Railroad each week-end and be reimbursed for meal expenses incurred (\$4.50 each work day).

*The claimants are:

**Foreman D. O. Daigre
Group 4 Operators:**

**F. Ellis
C. Ellis
W. Henderson
R. L. Roberson
M. Jenkins**

Extra Gang Laborers:

**R. Barton
L. E. Davis
C. Mosley
A. Anderson
E. Washington"**

EMPLOYEES' STATEMENT OF FACTS: The claimants hold seniority within their respective classes on the Mississippi Seniority District of the Illinois Central Railroad. They are regularly assigned members of Extra Gang 200, with division headquarters at Vicksburg, Mississippi.

Beginning on May 16, 1966, the claimants were assigned to perform the work of replacing cross ties on the Mississippi Central Railroad at Brookhaven, Mississippi. The claimants completed the tie renewal program at Brookhaven and on June 16, 1966, they were assigned to replace ties at Wanilla, Mississippi. This assignment resulted in the claimants being required to drive their personal automobiles from their regular assigned headquarters at Vicksburg on the Illinois Central Railroad to camp cars at Brookhaven and

financial loss. (Company's Exhibit I) On November 28, 1967, this claim was submitted to the Third Division of the National Railroad Adjustment Board (Company's Exhibit J)

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are regularly assigned members of Extra Gang 200 holding seniority on the Mississippi Seniority District of the Illinois Central Railroad. Between May 16 and June 23, 1966, a period of 28 working days, these Claimants were assigned to perform certain track maintenance work on track located within the geographical boundary of Claimants' seniority district, but on track owned by another Railroad, the Mississippi Central Railroad. The Organization contends that by assigning these Claimants to perform work on track owned by another Railroad, they (Claimants) were temporarily transferred from one seniority district to another and in so doing, Carrier violated the provisions of Rule 16(a) of the Agreement, which is:

"Employees will not be temporarily transferred by management from one seniority district to another except when necessary because of flood, fire, storm, hurricane, pressing necessity, or when agreed to between management and General Chairman. Employees thus transferred will retain seniority rights on the district from which transferred."

The Organization also contends Carrier is obligated to pay Claimants the actual necessary expenses incurred, and cites Rule 39(a) as authority. Rule 39(a) is:

"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. Actual necessary expenses will be allowed other employees when required to be away from their regular assigned headquarters."

Carrier contends that the Agreement does not require concurrence with the General Chairman to assign employees to work on a foreign line Railroad within the geographical boundary of the employees seniority district; and that even if Carrier is in error on its first contention, these Claimants are not entitled to damages for the reason that they failed to prove their expenses, while working on the foreign line, exceeded their normal expenses.

There is no doubt that the employees involved in this dispute held seniority on the Mississippi Seniority District of the Illinois Central Railroad and that they did not hold seniority on the Mississippi Central Railroad. It, therefore, follows that when these Claimants were assigned to perform work on other than the Illinois Central Railroad, they left their seniority district while performing on the Mississippi Central Railroad. Therefore, this Board finds that Rule 16(a) above quoted was violated by Carrier. However, this Board further finds that the Organization has failed to present a prima facie case to establish their right to recover for travel time, car mileage and meal expenses incurred. This referee has repeatedly held in other opinions that employees are entitled to a sustaining award when work belonging to them under the Agreement has been assigned to employees or independent contractors not under the Agreement in the absence of an emergency under the theory that Carrier could have had this work performed by the Claim-

ants in those cases on overtime, rest days, or by rescheduling their work assignments. In this dispute, these employees were not deprived of working; in fact, the record shows that they gained additional work which they might not have been entitled to, and, therefore, they were not deprived in any manner of work that contractually belonged to them. Although this award is not to be interpreted as precedent in any other possible claim that might involve this particular violation, it appears that the only just claim for monetary loss would be on the part of those employees holding seniority on the Mississippi Central Railroad. This statement is not to be used in determination of any possible claim by those employees, however, for the reason that this referee does not know all of the facts concerning that possibility and is not called upon to decide that matter.

This Board further finds that the Organization has failed to sustain their burden of proof in their allegations concerning additional expenses. The record discloses that these employees regularly live away from home in camp cars throughout the week; that they regularly prepare their meals and facilities are supplied for this purpose by the Carrier. The record further discloses that it is not the practice of the Company to allow mileage to and from work when the employees travel home on weekends. Therefore, a monetary award in this case would be in the nature of a penalty which this Board is without authority to assess; it does not involve lost work because of a violation of the Agreement. We can not speculate on what the actual necessary expenses might have been. See Awards 14981 by this referee, 15914 (McGovern) and 16691 (Dugan).

For the foregoing reasons, this Board holds that the Carrier violated the Agreement by assigning these Claimants to work outside their seniority district, but their monetary claim will be 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 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 violated.

A W A R D

Claim (1) to the extent that the Agreement was violated is sustained.
Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.

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