



Award No. 18017
Docket No. MW-18450

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SEABOARD COAST LINE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it refused to reimburse Machine Operator G. A. Murphy for the actual necessary meal expenses incurred during the month of January, 1968, during which time he was temporarily removed from his usual assignment as machine operator on System Grading Gang No. 6. (System File C-4 G. A. Murphy/G-223-MofW-M-25 M-62).

(2) The Carrier now be required to allow Claimant G. A. Murphy the sum of eleven dollars (\$11.00) to make him whole for the monetary loss suffered as a result of the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned by bulletin to System Grading Gang No. 6 as a machine operator. That was his regular assignment until February 5, 1968, when he was assigned by bulletin to the position of machine operator with another system gang.

In December, 1967, System Grading Gang No. 6 and a system gang identified as P&H Shovel, both of which were headquartered in camp cars, were located and working at Clinton, South Carolina. The lead operator assigned to System P&H Shovel was absent from work during the entire month. The claimant was temporarily diverted from his regular assignment and used to relieve him. It was understood by all concerned that the claimant desired to and would return to his regular assignment with System Grading Gang No. 6 when his temporary relief assignment terminated.

In the latter part of December, 1967, System Grading Gang No. 6 was moved from Clinton to Durant, Florida. At that time, the claimant requested Roadmaster W. H. Wideman to release him from his temporary assignment and to permit him to return to his regular and usual assignment with said grading gang. Roadmaster Wideman refused the claimant's request, thereby requiring him to remain at Clinton when his regular gang moved to the new work location. This is evidenced by a letter reading:

I call your particular attention to the second paragraph of Mr. Duffer's letter, wherein he states that he cannot agree that this is a valid claim. In the last sentence of this paragraph he states:

'Such a claim filed on March 27th for an occurrence on January 1st could not be recognized as being filed within the sixty day time limit.'

However, it is our position that the claim was filed within the sixty-day time limit, as Mr. Murphy was not advised until February 22, 1968, that the expense account in question was turned down. Therefore, filing the claim on March 27, 1968 would certainly meet the requirements of the statute of limitations in regard to filing claims.

We cannot agree with Mr. Duffer's position in declining this claim, and we are requesting that this claim be discussed in regular conference scheduled for January 29, 1969."

ASST. VICE PRESIDENT-PERSONNEL TO GEN. CHAIRMAN,
FEBRUARY 7, 1969.

"Your letter of January 7th with further reference to the claim in behalf of Mr. G. A. Murphy, Machine Operator, for travel time and expenses for January, 1968, and confirming conference discussion with Mr. Dick on January 30th.

As to your exception taken to our reference to time limit provisions not being complied with on a portion of the claim, it was pointed out to you that Mr. Murphy did not file a claim for automobile mileage or travel time by automobile for January 1st and it was not until March 27th that you filed claim for such payment for January 1st, which was outside of the sixty day time limit for filing a claim. That was the portion of the claim we had specific reference to which could not be recognized as being validly filed.

You did not present anything new in support of the claim, and you were advised there was no reason for changing our decision of November 12th."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned, at all times material herein, to System Grading Gang No. 6 as a Machine Operator.

During December, 1967, Claimant was temporarily removed from his regular assignment to fill a temporary vacancy as Lead Operator, System P&H Shovel. He completed this assignment on December 29, 1967. It was understood that upon completion of the temporary assignment Claimant would be returned to his regular assignment. Instead, he was temporarily assigned to operate Bulldozer No. 19 with System P&H Shovel, which he did throughout January, 1968.

Claimant submitted to Carrier a claim for \$42.00 for meals during the month of January. Carrier allowed him only \$31.00 (\$1.00 per day).

Rule 14 of the Agreement as amended February 28, 1968, effective October 15, 1967, reads in material part:

"When temporarily removed from his usual assignment an employee will be provided with board and lodging at the Company's expense or will be allowed necessary actual expenses."
(Emphasis ours.)

It is admitted that Claimant was "temporarily removed from his usual [regular] assignment" during the month of January, 1968. Whether this temporary assignment was at his request or by mandate of Carrier is immaterial, for as we said in Award 5174:

"The Agreement was clearly violated. The Carrier attempts to make a point of the fact that Claimant was not required to work the Hillview relief assignment. We have previously held, and correctly, we think, that if an employee is permitted to work a position he has been required to work it. . . ." (Emphasis ours.)

Rule 14 is solely applicable to the status: "When temporarily removed from his usual assignment." That Claimant was in such status during January, 1968 — removed from his regular assignment — is admitted by Carrier. He, therefore, was contractually entitled to: (1) "be provided with board and lodging at the Company's expense" or (2) "be allowed necessary actual expenses." He was provided with lodging in a Camp Car. He was not provided with board, which he paid for out-of-pocket. He, therefore, was contractually entitled to "be allowed necessary expenses" for board, which he claimed to be \$42.00 for January, 1968.

The only defense, under the first sentence of Rule 14, quoted supra, available to Carrier for disallowance of \$11.00 of the \$42.00 claimed is that the \$11.00 was not paid out by Claimant for "necessary actual expenses" for board; and, the burden of proof of the defense is vested in Carrier. Carrier did not even plead the defense. We, therefore, are compelled to sustain the Claim.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1970.

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