

Award No. 19012
Docket No. MW-19135

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 declined payment of expenses incurred by Apprentice Foreman O. C. Clark during the month of May, 1969, while working away from his regular headquarters by direction of Management. (System File No. 12-36; 12-32/C-4)

(2) O. C. Clark now be reimbursed for expenses incurred May 1-15, 1969, both dates inclusive, for a total amount of \$157.02.

EMPLOYES' STATEMENT OF FACTS: Claimant O. C. Clark was regularly assigned, by bulletin, to the position of apprentice foreman with headquarters at Vidalia, Georgia on the Savannah Division.

On May 1 and 2, 1969, the claimant was instructed to and did perform service at Pembroke, Georgia.

On May 4, 1969, Roadmaster E. C. Moncus instructed the claimant to report for work on May 5, 1969 as assistant foreman on Extra Force 8645 which was located and working in the vicinity of Fairfax, South Carolina. Thus, during the period from May 1 to May 15, 1969, both dates inclusive, the claimant was temporarily diverted from his regular assignment and used to perform work at Pembroke, Georgia and used as assistant foreman on Extra Force 8645 in the vicinity of Fairfax.

The claimant used his personal automobile to travel to and between various work points at Pembroke, Georgia and Fairfax, South Carolina. He was entitled to a mileage allowance therefor under the provisions of Section 3 of Rule 35 which reads:

"An employe in such service shall be furnished with free transportation by the Railroad Company in traveling from his headquarters point to another point and return or from one point to another. If such transportation is not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines, or the cost of other

distance of 5 miles. Mr. Clark, although having voluntarily bid in position of Apprentice Foreman, held seniority date of February 19, 1954 as Assistant Foreman and seniority date of August 10, 1964 as Foreman. At the time he was temporarily assigned to Extra Gang 8645, he was not only the nearest available qualified Assistant Foreman but was also the senior man in such rank then working in the lower rank of Apprentice Foreman.

Mr. Clark was thoroughly familiar with the working conditions and requirements of working on a floating gang, as he had previously worked 28 different jobs in which he lived on camp cars, including relief and temporary assignments.

Upon reporting to Extra Gang No. 8645, Mr. Clark informed Foreman Tucker that he would stay in motel in Fairfax (11 miles from Luray) and eat his meals out instead of living on the camp cars as he was entitled to expenses while working as relief Assistant Foreman. Foreman Tucker advised Mr. Clark that he did not think he was entitled to such expenses and there were ample facilities on the camp cars, including sleeping, bathing, and eating facilities.

Mr. Clark lodged at a motel in Fairfax, ate his meals at a restaurant and drove his automobile to and from the work location each day he worked as Assistant Foreman on the gang, submitting expense account therefor, which was declined because he was during that period a member of a floating gang provided with suitable camp cars, equipped with proper accommodations and facilities for living and eating thereon, available to him and it was not necessary for him to live and eat away from the camp cars. Payments due for proper expenses was recognized; however, he never submitted corrected expense account as requested.

On July 25, 1969, claim was filed by the General Chairman for payment of such lodging and meal expenses, based on Rule 36, Section 1, of the current working agreement, which was denied. Attached as Carrier's Exhibit "A" are copies of all correspondence exchanged covering the handling of the claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, holding regular assignment as apprentice foreman on the Savannah Division with headquarters at Vidalia, Georgia, was diverted by Carrier to perform temporary service at Pembroke, Georgia, on May 1 and 2, 1969. On May 4, 1969, Claimant was instructed to report to Extra Force 8645 as assistant foreman for temporary duty. Claimant reported as instructed and performed service for Carrier as assistant foreman on Extra Force 8645 in the vicinity of Fairfax, South Carolina between May 5, 1969 and May 15, 1969, inclusive. Claimant used his personal automobile to travel between various work points at Pembroke, Georgia and Fairfax, South Carolina, for which he claimed mileage. The record discloses that although camp cars with sleeping, bathing and eating facilities were available, Claimant elected to stay at a motel and eat his meals at a restaurant, which also required him to drive his car to and from his work location. Claimant submitted his claim for mileage, motel, and restaurant expenses. Carrier agreed to pay Claimant's automobile mileage, as claimed, but declined payment for motel and restaurant expenses.

Resolving this dispute requires interpretation of Rule 36, Section 1, of the Current Agreement, which is:

"Employees will be reimbursed for necessary, actual expenses incurred while away from their regular headquarters by direction of the Management, whether off or on their assigned territory. This Rule will not apply to employees traveling in exercise of their seniority rights nor to employees customarily carrying lunches and not being held away from their assigned territory an unreasonable time beyond the evening meal hours."

This case turns on whether or not the expenses incurred by Claimant for motel and restaurant while working away from home were necessary expenses. Each of the parties agree the expenses claimed were the actual expenses incurred by this Claimant.

This Agreement must be read and interpreted in its entirety. One Rule can not be interpreted to the exclusion of all other Rules. Rule 32 of the Current Agreement requires Carrier to maintain and furnish camp cars for Employees; to furnish such camp cars with adequate sleeping, cooking and plumbing facilities; to keep the same in clean and sanitary condition. Section 3 of Rule 32 recites that Employees will not be required to live on board on camp cars when working at points accessible to their homes. This is the only exception recited in the Agreement and it is a cardinal rule of contract interpretation when one or more exceptions are enumerated, none others will be implied. The fact is uncontroverted in this dispute that Claimant was not working at a point accessible to his home during the times giving rise to this dispute.

Also, it most certainly was not necessary for this Claimant to live in a motel and eat in a restaurant when a camp car was available for those purposes. It might be true the motel was more comfortable and that the restaurant food was more delectable. However, this does not indicate that the motel and restaurant expense was necessary.

If adequate camp car facilities are available and equipped as required by the Agreement, the type of expense being considered in this case (motel and restaurant expense) is not a necessary expense.

It appears from the record that the parties are in accord that claimant was entitled to expenses for May 1 and 2 while working at Pembroke, Georgia. He is entitled to reimbursement for this expense and also to reimbursement for board cost paid by other members of Extra Force 8645 for the period May 4 through May 15, 1969, as agreed to by the Carrier during the handling of the dispute on the property, as well as to the automobile mileage claimed.

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 to the extent shown in Opinion.

AWARD

Claim sustained to extent set out in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.