NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19671
THIRD DIVISION Docket Number SG-19376

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company that:

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and the Employes of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958, including revisions), and particularly Rules 22 and 51.

(b) Carrier further violated the Agreement, particularly Rule 58, when Carrier Officer J. H. Long did not render a decision on Brotherhood Local Chairman's claim of March 11, 1970, claiming on behalf of Claimant $7.00 per day, from and including January 18 to and including February 10, 1970.

(c) Mr. Gaston be allowed $7.00 per calendar day from November 16, 1969, to January 17, 1970, and $7.00 per calendar day from January 17, 1970, to February 10, 1970, inclusive, a combined total of $588.00 in accordance with Rule 22 of the current Agreement which provides:

Rule 22. ROAD SERVICE - WHEN HELD OUT OVER NIGHT.

Hourly rated employes, sent from home station to perform work and who do not return to home station on the same day (within 24 hours from regular starting time of their assignment) shall be allowed time for traveling or waiting in accordance with Rule 23. For hours worked, they shall be allowed straight time for straight time hours and overtime for overtime hours. Actual expenses shall be allowed at the point to which sent if meals and lodging are not provided by the Company, or if outfit cars to which employes are assigned are not available. (Carrier's File: SIG-108-41)

OPINION OF BOARD: Claimant, employed in the Signal Department in Carrier's Los Angeles Division Yards, was awarded the permanent position of Signalman with headquarters at Beaumont, California, by bulletin dated June 23, 1969. Claimant was not placed on his newly assigned position, since Carrier claimed it was unable to secure a replacement for him in his old assignment. On February 2, 1970 Carrier issued a notice abolishing the Signalman's position at Beaumont effective February 10, 1970. During this period Claimant received the $2. per day compensation provided for under the terms of Rule 51. The pertinent portion of Rule 51 reads:

"RULE 51 - ASSIGNMENTS TO NEW POSITIONS OR VACANCIES.

* * * * * * *

A successful applicant shall be placed on his newly assigned position within thirty (30) calendar days after the close of the notice, or be compensated thereafter on the basis of the established rate of either that position or the position on which he works, whichever is the greater. In the event the successful applicant is not placed on his newly assigned position within the thirty (30) calendar day limit provided herein, he shall also receive an expense allowance of $2.00 per calendar day until such time as he is placed on said position."

The Petitioner contends that Carrier violated Rule 22 of the Agreement when it failed to pay Claimant actual expenses even though it required him to perform work away (in Los Angeles) from his home station (Beaumont) and not returning to home station the same day. Petitioner argued that Claimant was entitled to both the expense allowances of Rules 22 and 51, claiming $7 per day as the actual expenses under the provisions of Rule 22. Rule 22 provides:

"RULE 22. ROAD SERVICE - WHEN HELD OUT OVER NIGHT.

Hourly rated employes, sent from home station to perform work and who do not return to home station on the same day (within 24 hours from regular starting time of their assignment), shall be allowed time for traveling or waiting in accordance with Rule 23. For hours worked, they shall be allowed straight time for straight time hours and overtime for overtime hours. Actual expenses shall be allowed at the point to which sent if meals and lodging are not provided by the Company, or if outfit cars to which employes are assigned are not available."

The primary issue to be determined is whether Beaumont was the Claimant's home station during the time in question. Both parties agree that Claimant was awarded the position (assigned by bulletin) but was not placed in the position. Rule 22 is specific in that it provides for compensation for employees sent from home station to perform work. Rule 51 quoted above distinguishes between an employee being assigned to a new position and placed in such a position.

We have held on many occasions that an employee, in order to acquire the rights of an occupant of a position, must commence work on such position. It is clear in this case that had Claimant been the "occupant" of the position, he would not have been entitled to the $2. per day provided by Rule 51. We have said in a series of consistent decisions that "positions are not to be construed as assigned until such time as work is actually begun thereon". (Award 2389). In Award 12315 we said:

> "..the words 'having a regular assignment' mean more than bidding in a position and having it assigned; there must be 'actual acceptance by physically taking over the duties...'"

(See also Awards 3633, 8104, 12224, 13046, 13810, 16804 and others). Contrary to the argument of Petitioner, we find that the cases referred to above all have relevance to the matter before us, even though they may involve other parties and factual circumstances. We feel that the principle that the incumbency in a position is not established until such time as work is begun should be reaffirmed in this matter; the perquisites of such a position would similarly begin at that time Hence we find that Beaumont did not become Claimant's home station since he never began to work there; he is therefore not entitled to compensation for expenses under Rule 22.

Petitioner, in Part (b) of the Claim, alleges a procedural deficiency by Carrier. A careful examination of the record leads us to find that there were not two separate claims for different time periods in this case; hence we find no merit in Petitioner's procedural contentions.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.

Dissent to Award 19671, Docket SG-19376

Award 19671 is in error in that it does not apply the agreement of the parties. The Majority has, instead, relied upon earlier awards of this Division, stating, without illustration, that those awards are relevant. With only one exception, the awards cited do not interpret an agreement covering Signalmen, and the one exception involved an agreement with a different Carrier and a question quite different from that in Award 19671. It is obvious that the Majority did not illustrate its contended relevance because there is none.

Had the Majority confined itself to the controlling agreement and applied it as the parties wrote it, we would not have the palpable error now facing us. Agreement Rule 51 states in pertinent part:

> "A successful applicant shall be placed on his newly assigned position within thirty (30) calendar days after the close of the notice, or be compensated thereafter on the basis of the established rate of either that position or the position on which he works, whichever is the greater. In the event the successful applicant is not placed on his newly assigned position within the thirty (30) calendar day limit provided herein, he shall also receive an expense allowance of $2.00 per calendar day until such time as he is placed on said position."
>
> (Underscoring ours)

Quite obviously the parties to the agreement considered that physical occupancy of a position was not a requirement to its being assigned to an employe, what the Majority may "feel" to the contrary notwithstanding.

Award 19671 being in error, I dissent.

W. W. Altus, Jr.
Labor Member