

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20012
Docket Number MW-19836

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company
(Pacific Lines)

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

(1) The Carrier violated the Agreement when it failed to transfer Track Laborer Jose Neria to Extra Gang No. 50 as he had requested in accordance with Rule 17(d) and, in lieu thereof, it transferred Track Laborers Earlie Hooks and Roberto Bocanegra to Extra Gang No. 50 (System Files 176-46 and 176-47).

(2) Track Laborer Jose Neria now be reimbursed for all expenses incurred because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: Claimant, a Track Laborer, requested a transfer to Gang #50 located in Colton, California, the community in which he lived, in accordance with Rule 17(d). Carrier admits that it overlooked his request from March 9, 1970 to September 18, 1970, improperly, and transferred two junior employees during this period to Gang #50.

Rule 17 (d) provides:

"Track laborers or helpers having one year or more seniority may apply to the Division Engineer for a transfer to any other gang on their home seniority district, and shall be transferred at the first opportunity when the force is increased or vacancy occurs on the desired gang. A track laborer so transferred shall establish a seniority date in the gang into which transferred the same as his seniority date in the gang from which transferred, and shall forfeit seniority in the latter gang."

Carrier first argues that the Claim was substantially changed, as submitted to this Board, from the claim handled on the property. We find no merit in this contention, since the Claim before us is the same Claim which was considered and denied by the Chief Operating Officer on the property (Award 13235).

The parties are in agreement that Claimant suffered no wage loss as a result of Carrier's violation of Rule 17(d). Carrier also disputes the expense claim taking the position that such a claim is not supported by any provision of the Agreement and further that no expense forms were submitted nor was any evidence submitted indicating what expenses were actually incurred by Claimant.

Since the expenses, if any, incurred by Claimant were not incurred at Carrier's request, we do not find that the Claim was deficient in that no normal expense forms were submitted. The record does show that at a conference on the property a listing of alleged expenses incurred was submitted by Petitioner. It obviously did not represent actual expenses, but at best an approximation; among other things it did not take into account time Claimant spent on vacation, or the food allowances he had already been paid. However, it is quite clear that Claimant was required to live away from his home during the work week, incurring some expense, and also drove home on weekends, both of which would not have been necessary if Carrier had complied with Rule 17(d). In Award 13185, in a related dispute, we said:

"The conclusion is inescapable that but for the wrongful displacement of Claimant by Carrier the days lost would not have occurred. Claimant exercised his right to displace well before the time allowed for him to do so had expired.... he should be adequately compensated for all damages directly flowing from the wrongful displacement. This would not only include loss of time, but also his travel and lodging expenses while absent from his home as a result of the wrongful displacement."

In this case too, we are convinced that Claimant must be made whole for any expenses incurred as a result of Carrier's wrongful acts, even though there are no such specific provisions in the Agreement. Claimant shall be reimburse for expenses for food during the period from March 9th to September 28, 1970 to the extent of \$2.00 per day for all days on which service was performed; he shall not be paid for vacation days. This figure is based on past practice and the fact that Claimant already received a \$2.00 per day food allowance; thus his food expenses will be reimbursed at the rate of \$4.00 per day. He shall also be paid mileage for the same period (not including vacations) at the rate of 9½¢ per mile for the first 1000 miles and 8¢ per mile for additional mileage, for the weekly trips home he made from his work location to Colton, California (and return). This mileage will be the standard road miles from the assigned work point to Colton, California.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

Award Number 20012
Docket Number MW-19836

Page 3

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

Claimant will be reimbursed for expenses in accordance with the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois this 31st day of October 1973.