

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22977  
Docket Number MW-22172

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when Welder Helper E. A. White's claim for reimbursement of the mileage and meal expenses he incurred on May 19, 20, 21, 22, 27, 28 and 29, 1975 was disallowed /System File 12-35 (76-14) J3/C-4 (17) - EAW/

(2) As a consequence of the aforesaid violation, the Carrier shall now reimburse Claimant White for the meal expense (\$17.25) and mileage (\$105.60) incurred by him during the period from May 19, 1975 through May 29, 1975."

OPINION OF BOARD: Claimant, Welder Helper E. A. White, was regularly assigned as a Welder on Carrier's Floating Welding Force No. 9207, headquartered at Abbeville, South Carolina. A temporary position of Welder Helper on the Stationary Welding Force 8574 at Rockmart, Georgia, was advertised on March 28, 1975, with the bulletin period expiring on April 17, 1975. Claimant was the senior bidder for this position and assignment bulletin was issued on April 28, 1975, assigning the position to him effective May 12, 1975. He requested to be on vacation the week of May 12 through 16 and was permitted to do so.

Thereafter, in accordance with Carrier's instructions to continue working as a Welder on Welding Force No. 9207 until bulletin could be posted and assignment could be made to get a replacement for Claimant on the Welder's position, Claimant traveled in his personal automobile from the headquarters of Force No. 8574 at Rockmart, Georgia, to Abbeville, South Carolina-- a distance of 220 miles. He protected that position on May 19, 20, 21, and 22, 1975. On May 27, 28 and 29, 1975, Claimant was again required to work as a Welder with Force No. 9207. In fact, Claimant continued to work as a Welder in Force No. 9207 until June 23, 1975. At that time, another Welder was assigned to the Floating Gang and Claimant assumed his duties as a Welder Helper on the Stationary Gang at Rockmart. It is noted that Claimant was compensated as a Welder (the higher rate of the two positions at issue) during the entire time, May 19-June 23, 1975.

On July 8, 1975 Claimant submitted on Forms 322 and 325 claim for expenses for the period of June 9 through June 17. On August 21, 1975 Claimant submitted claim for expenses for the period June 2, 1975 through June 5, 1975. Both claims were approved by Carrier. On August 25, 1975 Claimant submitted Forms 322 and 325 to Division Engineer Low requesting reimbursement for expenses incurred during the period May 19 through May 29, 1975. Carrier's Division Engineer declined payment of those claimed expenses in a letter dated September 11, 1975, on the basis that Claimant was being retained by Carrier on his former assignment (on the Floating Gang) and was not entitled to expenses as if he were assigned to Force 8594. The letter stated in part:

"It is our policy to retain an employee on his former position for a reasonable period of time pending the issuance of a bulletin advertising the job and the assignment of a replacement. The week that you were on vacation and the two weeks thereafter that you were held as a Welder on Force 9207, is definitely a reasonable period of time and, for that reason, you are not entitled to reimbursement for mileage or personal expenses. You previously claimed \$2.00 per day Meal Allowance for this period and were paid for it."

A formal claim on behalf of Claimant was presented to Carrier on November 10, 1975. At this point it is important to note we find the claim was timely filed, despite Carrier's protestation to the contrary. We find no merit to Carrier's assertion that a "claim" for actual travel expenses constitutes a "claim or grievance" in accordance with Rule 40 of the Agreement. The occurrence precipitating the instant grievance was the September 11, 1975 denial of Claimant's request for reimbursement. This grievance was timely filed under Rule 40. Therefore, we find the present claim is not barred under the time limits of Rule 40.

The Organization argues that since Claimant was assigned to Rockmart as of May 12, he is entitled to expenses incurred as if he were headquartered there from May 12 forward. Carrier counters that absent contract limitation on the time within which an employee must be released to a new position, the rule of reason must apply. Carrier maintains that two weeks is a reasonable amount of time to retain an employee on his old position, and therefore, Claimant is not entitled to expenses incurred as if he were transferred. Carrier further asserts that approving expenses claimed from June 2 to June 23, does not constitute an admission against interest which consequently entitles Claimant to expenses incurred prior to that date.

We do not find persuasive the Organization's argument that Award 20861 is "foursquare" with the present issue. In the former case, the Claimant was required to remain in his old position at a lower rate of pay--after bidding into and being assigned to a higher paying position. Carrier was required by the Award to compensate the Claimant for the difference in pay received at the old position and what he would have received if allowed to occupy the new position at the time of assignment. By contrast, in the instant case, Claimant bid into a lower paying position, yet properly received the higher rate of pay the entire time he continued to occupy his old position at Carrier's request. Absent evidence on the record that Carrier had been reimbursing Claimant's travel expenses prior to his assignment to Stationary Force No. 8574, we do not find persuasive the Organization's argument that Claimant, by continuing to protect his old position as Welder suffered a loss from "out-of-pocket" expenses. We find that in the facts of this case two weeks was not an unreasonable period to hold Claimant in his old position. See Awards 3-5941, 3-13319, 3-19380. Further, acceptance of claims for expenses as if he were transferred to the new position from June 2 through June 23 does not obligate Carrier to do so in the first two weeks of protecting his old position. Accordingly, the claim is 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 Employee involved in this dispute are respectively Carrier and Employee 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:

A.W. Pauls  
Executive Secretary