

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24472  
Docket Number MW-24286

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to reimburse Foreman N. Swearingen for lodging and meal expense incurred while he was required to be away from his headquarters (Robins, Iowa) from April 15, 1980 through May 6, 1980, both dates inclusive (System File C#33/D-2456).

(2) The claim as presented by General Chairman Mobry on May 21, 1980 to Assistant Division Manager F. P. Pawlak shall be allowed as presented because said claim was not disallowed by Assistant Division Manager F. P. Pawlak in accordance with Rule 47(a).

(3) As a consequence of either or both (1) and/or (2) above

'Mr. Swearingen was at Farson, Iowa sixteen  
(16) days and had receipts totaling \$192.00.

These expenses should be allowed under  
Schedule rules 11, 26, and 27, among others."

OPINION OF BOARD: The Organization contends that Carrier violated the controlling Agreement, particularly Rule 47(a) when Carrier failed to disallow Claimant's petition for expense reimbursement within the required sixty (60) days time limit. It avers that Carrier did not respond to the May 7, 1980 claim until September 16, 1980 which was well beyond the prescribed time limitations. It argues that Claimant is entitled to expense reimbursement in accordance with Schedule Rules 11, 26 and 27 et al for the time he spent as Section Foreman at Farson, Iowa. He occupied this position between April 20, 1980 and May 7, 1980.

Carrier contends that the May 7, 1980 claim is invalid since Claimant resigned from service on April 19, 1980 and therefore, could not be considered a covered employee. It asserts that he was allowed \$96.00 for reimbursement of expenses in accordance with revised Rule 27(b)2 based on the actual receipts he had furnished to the Roadmaster. It avers that he failed to prove the additional expenses allegedly incurred.

In our review of this case, we agree with Claimant's position. The basic question before us is whether Carrier was obligated to respond in timely fashion to the Organization's May 7, 1980 claim. It may well be that Claimant's employment status requires clarification since he requested separation allowance under the Milwaukee Railroad Restructuring Act Employee Protection

Agreement, but he accepted a short time extra assignment at Farson, Iowa and was reimbursed for expenses pursuant to the controlling Agreement. If he had a concern regarding the application of the reimbursement compensatory amounts and procedures, he could properly request Carrier to re-determine the correct amount. If Carrier disagreed with his claimed reimbursements, it would, of necessity, have to refer to the same pertinent schedule rules. In any event the applicable rules would determine the answer.

In the case herein, the Organization progressed a claim on the grounds that Claimant was not paid for the lodging and meal expenses incurred while he was required to be away from his headquarter's point at Robins, Iowa. He was reimbursed \$96.00. Unlike Carrier's responsive contention that the claim was moot because he resigned from Carrier service on April 19, 1980 and was paid \$96.00 for the actual receipts he submitted, we do not believe that these averments absolve it from complying with Rule 47(a). If Carrier felt that he was not a covered employee at that time or the \$96.00 reimbursement payout was accurate, it should have rejected the claim. If the claim were not resolved, both the reimbursement and the Claimant's employment status would be appropriate adjudicative issues. We find, however, that Carrier did not disallow the claim within the precise time parameters of Rule 47(a) and thus, it violated the Agreement. We will sustain the claim for \$96.00 which is the difference between what he was paid and what he 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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1983.

