NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26223
THIRD DIVISION Docket Number MW-26056

Gil Vernon, Referee

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

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 Mr. J. T. Shortnacy for the personal expense he incurred as a result of his assignment to perform relief service at Cuero, Texas from September 6 through 14, 1983 (System File MW-83-125/403-60-A).

(2) Claimant J. T. Shortnacy shall be reimbursed in the amount of $413.30."

OPINION OF BOARD: During the first week of September, 1983, the Carrier determined the need for a machine operator to perform relief service operating a spiker-gauger machine at Porter, Texas. The Claimant was recalled to perform this relief work, however, after working less than four (4) hours at Porter, the Claimant was instructed to use his personal automobile to travel to Cuero, Texas, and perform relief work operating a speed swing machine. He performed service at Cuero until September 14, 1983.

On September 14, 1983, the Claimant submitted an expense account for a total of $413.03. This Claim related to (1) mileage from Austin (his home) to Porter to Cuero on to Austin on September 6, 1983, and thereafter 200 miles per Claim date for a roundtrip Austin to Cuero and return, and (2) meals for each day.

The District Manager rejected the Claim since the Claimant when at Cuero was assigned to a per diem gang and thus had been provided $21.41 per day for meals and lodging. The Claimant submitted a revised expense account for mileage only in the amount of $292.10.

The General Chairman, on October 27, 1983, submitted a Claim for the full $413.03. The Claim noted that:

> "In order for Mr. Shortnacy to get from Porter, Texas, to Cuero, Texas he had to use his personal automobile and upon arriving at Cuero, Texas Mr. Shortnacy was not furnished living accommodations or company transportation, therefore he had to use his own automobile for transportation.

> Mr. Shortnacy states that he could not find any living accommodations in the city of Cuero due to an oil boom and conventions in the city, therefore he had to drive to where he could find living accommodations."

In support of the Claim, the General Chairman specifically cited Article 16, Section 12, paragraphs 2 through 7.

The Claim was denied and appealed on the same basis as presented. At the highest level, the Carrier reaffirmed the denial. It made reference to (1) the Agreement dated November 24, 1982, which provided payment of per diem to employees of trailer gangs when mobile trailers were provided, and (2) Article 16, Section 12, Section I, C(2). The Carrier offered to pay Claimant the mileage from Porter to Cuero.

At the outset, it must be noted that in its Submission before the Board the Organization offered extensive argument suggesting in some way the Carrier had violated the Agreement by not designating a headquarter point for the Claimant. Thus, this failure would entitle him to mileage. In this regard, it cited Article 16, Section 12, Article II(A).

With regard to this particular argument, the Board is constrained to point out, based on the objections of the Carrier, that this is a new contention. It is well established that our evaluation of a claim is limited to the position of the parties as they were developed on the property. The General Chairman relied solely on Article 16, Section 12, paragraphs 2 through 7. Article 16, Section 12, Section II(A) was never cited nor was any argument developed based on this provision.

Accordingly, the Board must limit itself to the Organization's initial reliance on Article 16, Section 12, paragraphs 2 through 7 and the Carrier's reliance on the Agreement provisions and arguments it developed on the property.

It must also be stated there is some confusion in the record over what Claim is before the Board. As noted, the original expense account was for $413.03 for meals and mileage. The Claimant later revised the Claim for mileage only ($292.10). Yet the General Chairman still filed the Claim for the original amount. In any event, it is clear the Claimant is not entitled to meal reimbursement as claimed since he had been compensated under the "per diem" Agreement of November 24, 1982. Article 16, Section 12 states in pertinent part that an employee providing relief--as was the Claimant--will take the same lodging as the employee he is relieving and "no allowance will be made for meals and lodging except as otherwise provided...." In this respect, the November 24, 1982 Agreement is relevant since it sets forth the meal and lodging allowances for the employee the Claimant was relieving.

With respect to mileage, Section 12, paragraph 4, and Section I, C(2) address employees required to travel from one designated assembly point (in this case Porter) to another (in this case Cuero). These Sections clearly provide Claimant compensation for one trip in each direction if he returned to Porter only. It does not cover circumstances where an employee travels from home to the designated assembly point of the relief assignment on a daily basis. The Rules do not support the Claim and the Board cannot create a rule for the Parties. In fact, the Parties took great care in making clear that the only mileage reimbursement to be made were those specifically set forth in the Agreement. Paragraph 6 of Section 12 is such a limitation when it states:

> "Employees will not be entitled to transportation, unless otherwise provided for in this agreement, between places of residence and designated assembly points, for travel over weekends or holidays, in the exercise of seniority rights, or for other personal reasons."

In summary, the only valid portion of the expense account based on the information in this record is for the mileage from Porter to Cuero and the Board will award the Claimant the precise mileage involved at the applicable rate.

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 disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.