

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

(James M. Douglas, Referee)

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY  
COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that Charles Parmley, B&B employe, Des Moines Division, be reimbursed for expenses incurred in the amount of \$9.55 from September 8th to 18th, 1942, inclusive.

**EMPLOYEES' STATEMENT OF FACTS:** Charles Parmley was working in the Bridge and Building gang located at Council Bluffs, Iowa which was not provided with outfit cars. On August 22, 1942, Bulletin No. 24 was posted advertising for position of second class carpenter in B&B Gang No. 4, a gang that was provided with outfit cars. Charles Parmley bid for and was assigned to that position. Under the application of Schedule Rule 4(b), assignments on the position which the employe was awarded must be made within fifteen days from the date the bulletin is posted. Accordingly, Charles Parmley should have been assigned as second class carpenter in Gang No. 4 not later than September 8, 1942. Instead of being assigned on September 8th, he was held at Council Bluffs and not assigned to Gang No. 4 until September 18th. During the interim from September 8th to September 18th, Parmley was required to board in restaurants at Council Bluffs, incurring expenses.

The Agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** Schedule Rule 34(c) governing payment of expenses incurred by employes away from their home stations, which of course also means outfit cars, reads:

"RULE 34. (c) TRAVEL AND WAITING TIME. Employes, except as provided by Sections (a) and (b), who are required by the direction of the management to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at the pro-rata rate.

If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where

"Des Moines, Iowa  
January 14, 1944  
File: 9885

Mr. B. R. Dew, Des Moines:

Referring to the attached papers in regard to a claim of Charles Parmley, the complaint made to me at Council Bluffs, was made by the men working in Foreman Roushe's gang. It is my recollection that the following employes were present at the time the matter was discussed with me.

C. C. Greer  
J. T. McGurran  
Lee Scott  
Edlo Fulton  
C. W. Bryan  
W. E. Halstead

As I recall the discussion, Bryan and Scott were the spokesman for the men making the complaint and it was my recollection that Parmley himself was present at the time.

The only thought I had in mind in connection with delaying the assignment bulletin was that we first be sure that the bulletin had been properly placed and all concerned had been given the opportunity to place their bid. Upon checking into the matter later, I was satisfied in my own mind that this had been done.

(Signed) W. D. Isaacs  
D. W. Isaacs"

Rule 4(b), quoted above, does not provide for a penalty if an employe is not permitted to take his new assignment within a certain period. We do have labor contracts with other organizations clearly prescribing a penalty under similar conditions, but there is no such rule or understanding with this organization. Regardless of this fact, however, and based solely on equity and fairness, we did offer to settle this case with the General Chairman on basis of paying Mr. Parmley the difference between what he paid for meals for period September 8th to 18th, as indicated, in Gang 5, Council Bluffs, and what he would have paid for meals during same period in Gang 4, where they had a dining car in operation and the men boarded themselves. The rate of pay was the same on both positions.

This offer, we feel, was entirely fair. The rules do not provide for any penalty, but in an endeavor to dispose of the case are still willing to make such adjustment as offered.

**OPINION OF BOARD:** Rule 4(b) governing the bulletining and assignment of positions imposes a double duty on Carrier; namely, first, to make the assignment and second, to post the name of the successful applicant. Both duties must be performed within the 15-day period. In this case the deadline was September 8th. Carrier dated the assignment bulletin as of September 8th but held it up for recheck and did not release it until September 17th. Merely putting a proper date on an assignment bulletin does not satisfy the requirement that an assignment shall be made by such date. The record is silent as to posting. It appears that Carrier violated both requirements of the rule.

Carrier concedes it violated the rule but asserts such violation was justified because of the protests of some employes that they had not had an opportunity to see the original bulletin. The record does not sustain the sufficiency of this excuse.

Carrier relies on Award 2174. The controversy decided there arose out of a delay in transferring an employe after he had been assigned. The opinion states that the Carrier had complied "with the letter of the rule" so far as making the assignment was concerned. Hence that award is not pertinent in this case where the rule was not followed.

Carrier argues there is no penalty prescribed for a violation of Rule 4(b) and Claimant is attempting to recover under a rule (34(c)) which is applicable only where an employe is absent from his home station on irregular service. Award 2838, cited by Claimant, reaffirms the doctrine previously announced in Award 685 that the absence of a penalty provision does not bar recovery even when no damage is shown. The purpose of such doctrine is to assure compliance with the rules.

However in this case it can properly be argued that the delay in obeying Rule 4(b) operated to keep employe from his home station and during such period changed the status of his work to irregular service so far as his new assignment would be concerned. In this connection it should be pointed out that a penalty is imposed in this case because Carrier failed to follow the rule on assignments. The question of a delay in transfer after an assignment is timely made is not before us for decision.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1945.