



Award Number 17696

Docket Number MW-18153

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

- (1) The claim* presented by Vice Chairman Ralph H. Charles on October 25, 1967, to Assistant Division Engineer of Track A. W. Wilson, should be allowed, as presented, because said claim was not disallowed by Assistant Division Engineer of Track A. W. Wilson in accordance with the provisions of Article V of the National Agreement dated August 21, 1954. (System file 1-E-173/L-126-1070)

(*) The claim, as presented, reads:

"I am hereby submitting claim in favor of L. E. Deaton, Foreman on Maintenance Gang #430 at Hazen, Arkansas, account he was forced to travel to Des Arc, Arkansas, to obtain room and board as no living quarters were furnished by the Company. Enclosed herewith is a photocopy of a receipt for his room and board from September 18 to September 25, 1967."

Mr. Deaton was also required to drive his personal automobile a total of 144 miles to and from Des Arc; 144 miles @ 8¢ per mile is \$11.52. Total amount for boarding and car mileage is \$29.52. It was agreed, while negotiating the December 1, 1965 Agreement that headquarters would be situated in towns where lodging and eating facilities were available for the employes. Please investigate and advise Mr. Deaton will be reimbursed for the expenses listed above."

EMPLOYEES' STATEMENT OF FACTS: The instant claim was filed with the Assistant Division Engineer of Track in accordance with instructions contained within the Carrier's letter which, insofar as it is pertinent hereto, reads:

CARRIER'S STATEMENT OF FACTS:

1. There is an Agreement between the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as Carrier, and certain of its employees represented by the Brotherhood of Maintenance of Way Employees, hereinafter referred to as the Organization, bearing an effective date of May 1, 1938 (as revised) on file with your Board which by this reference is made a part of this submission.

2. Under date of April 6, 1967, Carrier and Organization entered into an Agreement calling for the abolishment of all section gangs and the establishment of a reduced number of maintenance gangs (See Carrier Exhibit "A"). Prior to the implementation of this agreement, the claimant was assigned as foreman to Maintenance Gang No. 15, headquartered at Hermitage, Arkansas.

3. Effective with the implementation of the April 6, 1967 Agreement on September 15, 1967 claimant was displaced from this position by a senior Group No. 6 Foreman. He then exercised his seniority and placed himself as a foreman on Maintenance Gang No 430, headquartered at Hazen, Arkansas. The first day worked on his new assignment at Hazen, Arkansas was September 18, 1967.

4. Under date of October 25, 1967, Mr. R. H. Charles, Vice Chairman of the Organization, filed claim in behalf of claimant for meal, lodging and mileage expenses on September 18, 19 and 20, 1967 account no bunk cars or trailers furnished at Hazen, Arkansas.

5. Claim was declined under date of November 22, 1967 by Roadmaster R. C. Mingus acting in behalf of Assistant Division Engineer-Track, Mr. A. W. Wilson, on the basis there was no rule or provision between the Carrier and Organization providing that Carrier provide bunk cars, trailers, or expenses in lieu thereof, at the assigned headquarters point. (See Carrier Exhibit "B")

6. To avoid burdening the record, Carrier has not included copies of all correspondence on the property concerning this claim as it is anticipated the Employees will produce such correspondence as a part of its submission. However, Carrier will refer to various portions of this correspondence, as necessary, and will reproduced pertinent portions of same when appropriate Carrier will also take exception in its rebuttal statement to any errors or omissions in the Organization's reproduction of such correspondence.

7. The grievance procedures followed and progression of the instant dispute were timely and in accordance with the applicable rules in effect on this property and the Railway Labor Act, as amended.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant filed his claim for mileage and board and room account of traveling from Hazen, Arkansas to Des Arc, Arkansas with Assistant Division Engineer of Track in accordance with Carrier's Letter of Instructions of March 9, 1966. Carrier's Roadmaster R. C. Mingus by letter dated November 22, 1967, addressed to the Organization's Vice-Chairman, Ralph H. Charles, declined the claim.

The Organization contends that Roadmaster Mingus is not authorized to receive or deny claims; therefore, Carrier violated Section 1(a) of Article V of the August 21, 1954 National Agreement governing the parties to this dis-

pute, and thus this claim should be allowed as presented. The Organization further points out that Carrier, through its Assistant Division Engineer of Tracks, upon receiving a copy of Claimant's letter of appeal to Carrier's Superintendent, had sufficient time to have rendered a decision within the 60 day time limit as set forth in Section 1(a) of Article V of the 1954 National Agreement.

Carrier's defense to the Organization's contention in regard to improper handling on the property is that said argument is hypertechnical and repugnant to the intent and purposes of Article V of the August 21, 1954 Agreement governing the handling of claims and grievances; that Roadmaster Mingus was acting in behalf of Assistant Division Engineer of Track Wilson and the fact that Mr. Wilson's signature did not appear on the declination is not such a defect as to violate the intent and purpose of Article V, Section 1(a) of the August 21, 1954 Agreement.

We agree with the Organization that Carrier violated Section 1(a) of Article V of the August 21, 1954 Agreement when it permitted Roadmaster Mingus to decline the claim rather than Assistant Division Engineer of Track, A. W. Wilson, to whom the claim was presented. Therefore, we will sustain the claim.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1970.