Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8167
Docket No. 7990
2-C&NW-CM-'79

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(ystem Federation No. 76, Railway Employes'
(Department, A. F. of L. - C. I. O.
Dute: ((Carmen)
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(Chicago and North Western Transportation Company

Dispute: Claim of Emoloyes:

1. Carmen Gene Miller and Brian Bennett, Sioux City, Iowa, were denied reimbursement for meal expenses while they were away from home station on emergency road work. The dates and amounts of meals purchased are as follows:

Gene Miller	9/13/77	$2.55
Gene Miller	9/24/77	$1.65
Brian Bennett	9/13/77	$2.89

2. That the Chicago and North Western Transportation Company be ordered to reimburse Carmen Gene Miller and Brian Bennett for meal expenses incurred while away from home station on emergency road work as listed above, and for all meals similarly incurred subsequent to the dates listed, as this is a continuous claim.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This dispute involves a claim for reimbursement for meal expenses while away from home station on road work, in which the circumstances found the Claimant's at work at their headquarters location at both the beginning and end of the work day.

There is no dispute between the parties that the Claimants were "on the road" during the time of their lunch period and were not furnished meals by the Carrier. There is also no dispute as to the validity of the bills ($2.53 and $1.65 for one Claimant and $2.89 for the other Claimant) indicating the amount actually spent for lunch on the two dates in question.

The Board does not accept the Carrier's apparently belated argument that one of the Claimants was without a headquarter location. The record indicates otherwise.

The rule involved is Rule 10, the first two paragraphs of which reads as follows:

> "An employe regularly assigned at a shop, enginehouse, repair track or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection point, will be paid from the time ordered to leave home station, until his return for all time worked in accordance with practice at home station and will be paid straight time rates for traveling or waiting except rest days and holidays which will be paid for at the rate of time and one-half.
>
> If, during the time on the road a man is relieved from duty and 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 him from making his regular daily hours at home station. Where meals and lodging are not provided by the railway company, actual necessary expenses will be allowed."
> (Emphasis added)

The final sentence of the second paragraph might be said to be crystal clear and totally unambiguous. If this were the case, no reference to past practice as to such payments would be of assistance to either party. The rule would prevail.

Nor need the Board be deflected in its reasoning by the agreement that "meals and lodging" must mean only the two items in conjunction and not either separately. Common English usage dictates that either meals or lodging may, under appropriate circumstances, be reimbursed. The Carrier agrees, for example, that it reimburses for a meal when an employe is away from headquarters location for lunch, does not return to headquarters at the end of the work day, and yet is not away from home at night so as to incur lodging expenses.

Nor need the word "necessary" in "actual necessary expenses" require a diversion down a tangential path. Three meals a day at reasonable cost can be considered "necessary". Argument is raised by the Carrier as to Internal Revenue Service definition of "necessary". But this merely distinguishes between deductible business expense and taxable income -- a distinction totally irrelevant to an interpretation of the provisions of the applicable collective bargaining agreement and one with which the Board is happily not charged to interpret.

This brings the Board back to the possible ambiguity of the final sentence of the second paragraph of Rule 10.

As a first interpretation, it can be viewed as an integral part of the second paragraph which, in the first extensive sentence, deals solely with employes relieved from duty while on the road and subject to "irregular service". Taken in this logical but narrow fashion, the allowance for meals and lodging (if not provided by the Carrier) would obviously not refer to an employe (as in the present dispute) who begins and ends his day at his headquarters location and thus is at no time "relieved from duty" while on the road.

Alternatively, the sentence can be read in the context of the introductory paragraph of Rule 10, and therefore to the entire rule which refers to any employee "regularly assigned" at a shop, etc. who is called for emergency work "away from such shop", etc. If this is the meaning, then the Claimants herein can rightly assert coverage.

Thus, sufficient ambiguity is established to make reference to past (and current) practice both necessary and relevant.

The Organization urges its version to established practice in several ways. It offers the statements of four long-term employees who state, in effect, that they always received lunch reimbursement while on the road over a long period of years. Not one of the statements, however, specifies that such payments occurred when the employe began and ended his work day at headquarters, leaving open the possibility that these four employes, on the road, "always" stayed overnight, in which case all agree that meal reimbursement was proper.

The Organization is on firmer ground in quoting one of the Carrier's Assistant Division Managers (in a memo dated March 3, 1977, less than seven months prior to the instant claim) that the Carrier was spending "unnecessary money each month by paying expenses to road work drivers for lunch" (thus establishing at least a local practice). After ordering this to cease, the same official on April 1, 1977, rescinded the order because "Carmen used to perform road work are entitled to a meal at Company expense".

The Board concurs with the Carrier that Agreement interpretation need not be governed by rulings of a subordinate official. But what the Organization here establishes is not interpretation but the uncontroverted existence of a practice, even if only on one of the Carrier's divisions. Carrier further states in its submission that "such erroneous payments had become the practice at various points for a few years . . . but it has not been the practice at every point" (Carrier's Submission, p. 14). Unlike certain situations in work classification disputes, practice need not be universal to be considered as relevant.

The Carrier suggests one other established practice - namely, that meal payments are made not only if employees were away overnight, but also if they "failed to return to their headquarters point at their usual quitting time" (Carrier's Submission, p. 14). If the Carrier urges the applicability of meal reimbursement solely to conditions written in the second paragraph of Rule 10, then the Board fails to find sanction for such payment where employees simply fail to return to headquarters at the end of the day -- unless such payments are part of an established, mutually accepted practice interpreting the rule.

The Board therefore finds an ambiguity in the application of the rule. Turning to practice, the Organization makes a creditable case for its position, while the Carrier has not shown, in its evidence offered on the property, that such practice is non-existent.

Both the Carrier and the Organization cited numerous other Awards in which the rule wording is not identical and thus not instructive here. However, Public Law Board No. 2339 (CNW & IBTW, Weston) sustained an identical claim under virtually identical language with the same Carrier. For a similar conclusion, see Public Law Board No. 1540 (ICG & IBTW, Cull).

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1979.