

Award No. 2139
Docket No. 2061
2-WAB-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the provisions of the controlling agreement System Installer Travis Daniels was not compensated by the Carrier for expenses he had incurred while away from his assigned headquarters during the month of October 1954.

2. That the Carrier be ordered to compensate the aforesaid System Installer for expenses in the amount of \$4.20.

EMPLOYEES' STATEMENT OF FACTS: System Installer Travis Daniels, hereinafter referred to as the claimant is employed by the Wabash Railroad Company, hereinafter referred to as the carrier, as a system installer with headquarters at Montpelier, Ohio. Claimant is compensated on a monthly basis with expenses when away from headquarters.

The claimant during the month of October 1954, while working at Decatur, Illinois, incurred expenses in the amount of \$4.20. This claim was presented to Superintendent of Signals and Communications Mr. G. A. Rodger in a letter addressed to him dated December 14, 1954 from the general chairman and in his reply of January 3, 1955 he states in part,

"This involves Mr. Daniels' expenses for meals at Decatur, Illinois, which is the location of his residence. This is not considered actual necessary expenses and the claim is, therefore, denied."

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective October 1, 1940, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: It should be noted that Mr. Rodgers in his letter of January 3, 1955 did not decline to allow this expense claim on the basis of the agreement, Rule 3, last paragraph which reads:

Meals consumed at an employe's place of residence are not "necessary" expenses incident to that employe's employment relationship with the company and have never been so regarded in the application of agreement rules providing expense allowances.

The meals, payment for which is asked by petitioner in this case, are meals which claimant consumed at his point of residence, and meals which he would have provided at his own expense, irrespective of his employment with the railroad.

In view of the fact that the alleged cost of the three meals of October 29, 1954, was not "actual necessary expenses paid for meals," the claim is not supported by the rules and, if not dismissed, should be denied.

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.

The parties to this dispute were given due notice of hearing thereon.

It is contended carrier improperly refused to compensate System Installer Travis Daniels for expenses he incurred on Friday, October 29, 1954 for meals while away from his assigned headquarters of Montpelier, Ohio.

Section 5 of the parties' Memorandum of Agreement dated April 26, 1948 provides, insofar as here material, as follows: "When System Installers are required to be away from headquarters, if meals * * * are not furnished by the railroad, actual necessary expenses paid for meals * * * will be allowed by the railroad."

Carrier contends this claim should be dismissed because, prior to its being lodged here, representatives of the employes did not handle it on the property with carrier's highest operating officer designated to handle such disputes which it contends is C. A. Johnson, Vice-President and General Manager. Such handling on the property is a prerequisite to the right to refer a dispute here. Section 3 First (i) of the Railway Labor Act, as amended. See also Rule 11(b), Grievances, of the parties' effective agreement.

But the facts do not fully support carrier's contention in this regard. As far as grievances of this character are concerned it would appear that prior to about 1948 Arthur Davis, Assistant General Manager, was considered by both parties to have such authority, and since then both parties have treated J. C. Bousfield, Chief Engineer, as having such authority. It was from his ruling that this appeal was taken. Carrier can designate whomever it wants as its chief officer to handle such disputes but when it has treated one of its officers as having such authority it is estopped to deny his authority to the other person's disadvantage. Notice should be given to representatives of the employes if any change is desired.

The facts are very simple. Daniels, a system installer, had headquarters at Montpelier, Ohio. On October 29, 1954 he worked at Decatur, Illinois, and incurred expenses of \$4.20 for breakfast, dinner and supper. Under the quoted rule there is no doubt of the fact that claimant incurred these expenses while away from his headquarters; the question being, were they actually necessary expenses within the meaning thereof? Claimant, a widower, for some reason maintained a small apartment at Decatur and did, occasionally, prepare his meals there. It would seem to us that to do so, on days when he was working, would be both inconvenient and impractical.

This is not a situation where meals would be prepared in the home, regardless of whether he would be there or not, and he merely ate out for his own convenience or satisfaction. Under the circumstances disclosed by the record we think the cost of these meals was "actual necessary expense" of claimant while working at Decatur, away from his assigned headquarters. In view thereof we find the claim should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June, 1956.