

Award No. 3474

Docket No. 3135

2-AT&SF-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier erred when they failed to reimburse full necessary expenses incurred by Communications Linemen: J. E. Branch, A. J. Dunivan, T. F. Garcia, Ed. Hopkins, Ronnie Turner and C. S. Cox.
2. That accordingly the Carrier be ordered to pay J. E. Branch, \$13.20 — A. J. Dunivan, \$12.85 — T. F. Garcia, \$14.90 — Ed. Hopkins, \$14.20 — Ronnie Turner, \$12.75, and C. S. Cox, the full amount due as evidenced by his submitted expenses for the month of June, 1957.

EMPLOYEES' STATEMENT OF FACTS: In the communications department of the Western Lines the Santa Fe Railroad has employed communications linemen who travel over the Grand Division, performing construction, repairs and maintenance to telephone and telegraph equipment. These employees live in outfit or bunk cars, which are recognized under the provisions of the agreement as their headquarters.

Communications Department Linemen J. E. Branch, A. J. Dunivan, T. F. Garcia, Ed. Hopkins, Ronnie Turner and C. S. Cox, hereinafter referred to as the claimants, are hourly rated employees regularly employed by the Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier and assigned to a communications department outfit or bunk car as headquarters and required to construct, repair and maintain telephone and telegraph equipment.

May 24, 1957, these claimants were required by the carrier to move to Tahoka Texas, to make emergency repairs account of Tornado.

and Dodge City were in the same situation as to lodging as if they had remained at Kinsley. They were reimbursed for lodging expense incurred by them at Elkhart and Dodge City, and if at Kinsley would have been provided lodging in outfit cars without cost to them.

As for meal expense, the last sentence of Paragraph (a-4) of Rule 122, above quoted, provides that employes covered by that rule, such as those involved in the instant dispute, will be reimbursed for actual meals and/or **lodging expense while traveling and waiting** if not furnished by the company. As shown in the carrier's statement of facts, the claimant employes were reimbursed for meal expense incurred in connection with breakfast at Amarillo and lunch at Stratford on June 1st while en route to Elkhart, as provided for in paragraph (a-4). The claimants were not, however, reimbursed for meal expense incurred by them beginning with the evening meal at Elkhart on June 1st and continuing through the noonday meal at Dodge City on June 4th, involved in the instant dispute, on the premise that the men were not en route (traveling or waiting while being moved to a new location) while at Elkhart where they had a job to do on June 3rd. They were also not en route after arriving at Dodge City on June 3rd since they also had a job to do there on June 4th. Here also, while located at Elkhart and Dodge City, the claimants were in the same situation as to meals as if they had remained at Kinsley. In other words, they would have had to obtain their meals on the outside at Kinsley at their own expense, the same as at Elkhart and Dodge City.

That, moreover, the agreement rules do not provide the allowance of all personal expense in circumstances such as presented in the instant dispute, and that the subject matter is one for negotiation between the parties rather than consideration by the National Railroad Adjustment Board, was recognized by the general chairman in letter of March 10, 1957, addressed by him to the carrier's general superintendent of communications proposing certain changes in Rule 122. Copies of the general chairman's further letter of May 8, 1957, addressed to the carrier's asst. vice president in connection therewith, and the latter's reply of June 20, 1957, are submitted herewith and identified as carrier's Exhibits B and C respectively.

Furthermore, the work at Elkhart and Dodge City did not fall in the emergency category, such as the temporary repairs to communication lines damaged by tornadoes in the vicinity of Tahoka, and consequently also did not come within the purview of the carrier's practice of allowing meal expense in connection with temporary emergency work, although not provided for in the agreement rules.

Clearly the claimant employes were reimbursed for all personal expense on this trip to which they were entitled under the agreement rules and practices thereunder, and nothing more is due them. A denying award is respectfully requested.

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 said dispute were given due notice of hearing thereon.

The issue here is whether the claimants, who are communications linemen and members of a floating gang, are entitled to be reimbursed for meal expenses incurred on particular dates while at Elkhart and Dodge City, where they had been assigned to perform non-emergency work. Prior to the period in question, claimants had been working out of Kinsley, Kansas, making permanent repairs and using boarding cars as their home station. On May 24, 1957 claimants were required to suspend work on the Kinsley project and proceed by truck to Tahoka to make emergency repairs to facilities affected by tornado damage. This work being completed by May 31, 1957, the gang was instructed to proceed to Elkhart to do certain non-emergency work. From that location they were sent to Dodge City where other non-emergency work was performed. They then returned to Kinsley and rejoined their boarding cars. While at Elkhart and Dodge City claimants were lodged at private hotels and were reimbursed for lodging expenses incurred.

The petitioner relies on Section (a-1) of Rule 122 wherein it is provided, in pertinent part, that employes regularly assigned to road work who "are unable to return to home station on the same day (but) can be relieved for five (5) hours or more and permitted to go to bed . . . will be allowed . . . expenses for meals and lodging if not furnished by the Company." It is urged that since claimants could not return to their boarding cars "on the same day" in the subject situation, meal expense allowances are due them. Carrier relies on Section (a-3) of Rule 122 which states: "Where camp cars are not provided, a hotel or lodging house shall be considered the same as a boarding car for employes in floating gangs." Respondent asserts that claimants therefore were in the same status at Elkhart and Dodge City as if they were at Kinsley and that in consequence they are not entitled to the requested meal allowances.

Rule 122 is somewhat wanting in clarity as applied to the facts of this case. However, it is not our function to rewrite the rules. We can only interpret the language the parties have fashioned, giving to the various sections of the rule the most consistent application that is possible.

It is our view that Section (a-3) of the rule does not apply to a floating gang that is regularly assigned to boarding cars. For such a gang, the boarding cars represent the home station, and when the gang is unable to return to these cars the same day, Section (a-1) governs.

The carrier's interpretation amounts to stating that so long as said gang is provided lodging either in a boarding car, a hotel or a lodging house, the employes are at their home station. But under this interpretation, they would always be able to return to their home station the same day so long as they are relieved for five hours or more to sleep under civilized shelter.

It is common practice for some gangs to be assigned to trucks and to make their headquarters at the place of lodging each night. The carrier's contention in this case is that a gang regularly assigned to boarding cars is in no different position when lodging away from the cars is provided. If this contention were correct, there would be no reason for the reference in Section (a-1) of the rule to allow for meal expenses. However, we are not entitled to presume that the parties performed a useless act in adopting this language.

Since the subject gang was regularly assigned to boarding cars as their home station, and since they were unable to return to said boarding cars during the period covered by this claim, it follows that they are entitled to be reimbursed for the meal expenses in question.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1960.