

Award No. 3658

Docket No. 3327

2-SLSF-SM-'61

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. 22, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

SAINT LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current Agreement Water Service Mechanic, Jack Blaine was not compensated by the Carrier for expenses he had incurred while away from his assigned headquarters during the month of September 1957.

2. That the Carrier be ordered to compensate the aforesaid Water Service Mechanic for expenses in the amount of ninety-five (\$95.65) dollars and sixty-five cents.

EMPLOYEES' STATEMENT OF FACTS: Water Service Mechanic, Jack Blaine hereinafter referred to as the claimant is employed on the St. Louis-San Francisco Railroad Company, with headquarters at Amory, Mississippi. Claimant is compensated on a hourly rated basis with expenses when working away from headquarters.

The claimant during the month of September 1957, while working at Pensacola, Florida, incurred expenses in the amount of ninety-five (\$95.65) dollars and sixty-five cents. This claim was presented to Division Engineer, G. E. Warfel in a letter addressed to him dated November 2, 1957, from the General Chairman and his reply of November 27, 1957, he states in part:

"Do not agree with you that Mr. Blaine is justified in turning in expenses while at Pensacola. His residence is at Pensacola despite the fact that his headquarters are at Amory, Mississippi. It is my opinion that meals and lodging at Pensacola are not actual necessary expenses for Mr. Blaine at this point. Therefore, claim is declined."

that under certain conditions where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed.

"Question has arisen concerning expenses for employes away from outfit cars, which are designated their headquarters but at the point where the men live. Specific case is B&B Carpenter assigned to B&B gang outfit cars at Marked Tree, Ark., was sent from the gang to Memphis Terminal to perform work at Yale. This man lives at Memphis.

"While at Memphis Terminal he, of course, stayed at home. He purchased his noon meal at Yale. This man would not be entitled to expenses for lodging, breakfast or dinner (evening meal) at his home but he would be entitled to expenses for the noon meal which he purchased.

"Please see that similar cases are handled accordingly."

The rules in the Maintenance of Way Agreement, referred to in such letter, provided "Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed." Carrier does not contend that this January 25, 1938 letter was issued as a result of any agreement or understanding with the Sheet Metal Workers International Association, but such letter does show that the provisions of a rule which are identical to the rule here involved relating to "actual necessary expenses" have never been interpreted to include reimbursement for meals taken in an employe's home or for lodging in the employe's home, and that the carrier was then in 1938 willing to reimburse an employe in those circumstances, where away from his headquarters point but at his point of residence, for "actual necessary expenses" actually incurred including reimbursement for noon meal which the employe purchased.

In conclusion, carrier submits that the agreed to wording of the rule here involved does not support the employes' contentions. There are numerous awards of this Division holding that the burden of proof rests upon the claimant, and, as shown by carrier in its submission, there has been no proof or evidence submitted to this carrier by the employes to support their contentions—See Second Division Awards 2642, 2652, 2693, 2712 and 2740. To sustain the employes' claim in this docket would do violence to the rule as agreed to by the parties. There is no ambiguity to the provisions in dispute—actual necessary expenses—and there is a clear cut open admission on the part of employes that the claimant did not incur any actual necessary expenses by taking his meals at home and by securing his lodging at home. For any and all reasons fully outlined herein, carrier submits that employes' claim is completely lacking in merit and agreement support and requests that this Board deny such claim in its entirety.

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 waived right of appearance at hearing thereon.

Claimant had his residence at Pensacola, Florida, having purchased a home there during his long period of service at that point. In June 1957 claimant's position as sole Water Service Mechanic at Pensacola was abolished. He then exercised his seniority and bid in a position at Amory, Mississippi, which thereafter became his headquarters. During September 1957 claimant was assigned to work at Pensacola. For the period of his service at that point claimant submitted an expense statement to the Carrier covering 21 days. For each of these days claimant listed expenses for lodging and three meals, the total amount claimed being \$95.65. It is established that claimant lived at his home during the month in question. The Carrier refused to reimburse claimant for the amount claimed, on the ground that there was no showing that he had actually incurred these expenses.

The agreement language that governs under the facts of this case is:

"Where meals and lodging are not provided by the Company, actual necessary expenses will be allowed."

This provision means that necessary out-of-pocket meal and lodging costs incurred by the employee will be allowed. It must be evident that claimant incurred no out-of-pocket cost for lodging. The evidence presented does not permit the conclusion that the amounts charged by claimant for breakfast and dinner on each of the 21 days actually was incurred by him. This is not to say that he could not have had any out-of-pocket cost for any of these meals, but we are not entitled to speculate on what his actual necessary expense for such meals might have been. We will sustain the claim only to the extent of the luncheon expenses listed in claimant's statement to the carrier. There is basis for the view that claimant actually incurred expenses for luncheons taken away from home.

AWARD

Claim sustained to the extent indicated in the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1961.