

Award No. 5435

Docket No. 5300

2-GN-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carrier has violated the rules of the current agreement when it failed to reimburse Electrician Francis L. Malsam as specified in the Schedule Rules for the entire amount of expenses which he incurred while performing service for the Carrier during the month of April, 1965.

2. That, accordingly, the Carrier be required to compensate the aforementioned employee in the amount of \$38.25.

EMPLOYEES' STATEMENT OF FACTS: Electrician Francis L. Malsam, hereinafter referred to as the Claimant, had been assigned by the Great Northern Railway Company, hereinafter referred to as the Carrier, to its System Electrical Crew No. 6. This crew is headquartered at Great Falls, Montana. During the month of April, 1965, the Claimant was assigned to work in his classification at points which included Essex, Havre, and Glasgow, Montana. Electrical Crew No. 6 had outfit cars for living purposes during the period in question, and the crew members purchased their meals at the locations where they happened to be working.

At the end of the month of April, 1965, the Claimant submitted an expense account in accord with carrier instructions and which was based on the daily rate as specified by the Schedule Rules. The Carrier elected to deduct the sum of \$38.25 from the Claimant's April expense account. These deletions were for meal expenses incurred by the Claimant at the points of Essex, Havre, and Glasgow, Montana, and were as follows:

| | | |
|----------------|------------------|--------|
| Havre, Montana | — April 1, 1965 | \$3.75 |
| Havre, Montana | — April 2, 1965 | 3.75 |
| Havre, Montana | — April 8, 1965 | 3.75 |
| Havre, Montana | — April 19, 1965 | 3.75 |

FOURTH DIVISION AWARD 1487

Rwy. Employees' Dept. v. FGE (Referee Harold M. Weston)

"It is certainly not our province to rewrite the Agreement or to subject it to strained and artificial interpretations in order to reach a desired result, no matter how tempting it may be to do so in a particular case. The rules now under consideration, unlike any other collective bargaining agreements, fail to cover the point in issue and, inasmuch as the burden of proof in this case rests with Petitioner, the claim must be denied."

Of special interest is the fact that this Division has had occasion to reaffirm this basic principle in its Award No. 4927, System Federation No. 101 v. Great Northern Railway Company, Referee Levi M. Hall, wherein the Findings state, in part:

"There is no statement in Rule 22(c) 'that the work of derailment having been completed.' **This Board is without authority to revise the rule.**" (Emphasis ours.)

In the current case, the Carrier is simply requesting that this Board again reaffirm that basic principle by refusing to unilaterally read language into Rule 65(b) not now contained therein; or, conversely, read out of that rule the basic requirement that the per diem allowance provided therein shall apply only to "employees in outfit cars."

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. The Organization has the burden of proving by positive evidence that Rule 65, solely relied upon in this case, specifically requires payment of the \$38.25 meal allowance as claimed during April, 1965 while the claimant was living at his residence in Havre, Montana. The Carrier submits it has failed to carry this burden.

2. Under the plain meaning of the language used in Schedule Rule 65(b), the Carrier is obligated to reimburse only "employees in outfit cars" the specified \$3.75 per day allowance "to purchase . . . meals." The claimant took himself out from under Rule 65(b) on the dates above tabulated by residing in his own residence at Havre on those dates.

3. This Board has no authority to rewrite Rule 65(b) under the guise of interpretation. It must limit its function to applying the rule in accordance with the plain meaning of the language contained therein. As above stated, it has already confirmed this principle in its Award No. 4927, involving this Carrier.

For the foregoing reasons, the Carrier respectfully requests that the claim of the employees be denied.

(Exhibits not reproduced.)

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

This claim is for per diem payments at the rate of \$3.75 per day incurred during the month of April, 1965, for meals while the claimant was assigned to an outfit car. The work performed during April was at Havre, Montana, the home of the claimant.

The Carrier refused to pay the per diem expenses as the claimant's residence was at Havre, and he incurred no expense for meals, as he had them at home.

The Claimants contended Rule 65(b) applied:

"When meals are not furnished by the Carrier to employees in outfit cars, \$3.75 per day will be allowed each employee to purchase his meals."

Thus, when the claimant was assigned to an outfit car the rule provided \$3.75 per day allowance irrespective of where he took his meals.

The rule is clear and explicit that when meals are not furnished the employee will receive \$3.75 per day allowance to purchase meals. No limitation is placed on the employee as to whether he has his meals at home or among friends.

Thus, the Board is of the opinion that under the Rule 65(b) the claim should be sustained. The Claimant be paid per diem of \$3.75 for the month of April, 1965, while he was stationed at Havre, Montana, with credit for previous payments.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.