

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7053
Docket No. 6920
2-AT&SF-EW-'76

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier entered into an Agreement with D. W. Quaney and L. J. Christiansen to provide them with living quarters, utilities and parking facilities or a subsistence allowance in lieu thereof.
2. That the Carrier's refusal to continue such to the Claimants beyond thirty (30) days after their movement to Amarillo, Texas is a violation of the Agreement.
3. That, therefore, Messrs. Quaney and Christiansen be compensated one hundred dollars (\$100.00) per month that the Carrier fails to pay them subsistence after they moved to Amarillo.
4. And further, that they be compensated thereafter one hundred dollars (\$100.00) for each month they perform service in a Railwelding Plant. This is a continuing 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 waived right of appearance at hearing thereon.

The Claimants, Messrs. Quaney and Christiansen, are employed as Welder Maintainers (formerly called Diesel Generator Operator Mechanics--DGOMs) at the Carrier's Centralized Welding Plant in Amarillo, Texas. The Organization contends that the Carrier entered into an Agreement with the Claimants to provide them with living quarters, utilities and parking facilities or a subsistence allowance in lieu thereof, and that the Carrier's refusal to continue such to the Claimants beyond 30 days after their movement to Amarillo, Texas, is a violation of this Agreement.

The IBEW and the Carrier are parties to the so-called "Shop Crafts' Agreement" effective August 1, 1945, and reprinted January, 1957, including revisions. The Organization has not cited any rule or provision of the Shop Crafts' Agreement that the Carrier has violated, nor can we find any provision or rule in this Agreement of the parties that can support a mandatory subsistence allowance for the Claimant Welder Maintainers at Amarillo. Nor has the Organization submitted any letter Agreement between itself or the Claimants and the Carrier which would require the Carrier to pay a subsistence allowance to the Claimants at Amarillo. This Board has searched the Agreements of July 7, 1958 and July 18, 1960 between the Carrier and the IBEW and IAM and can find no Agreement support for the Claimant Welder Maintainers' claim for a subsistence allowance at Amarillo.

The Organization contends that the Agreement it relies on is the verbal, but none the less binding Agreement between the Carrier and the Claimants by which one of the conditions of employment of a Diesel Generator Mechanic (now Welder Maintainer) was that the Carrier furnish living quarters and utilities or a living allowance. The Organization contends further that the Claimants consummated the Agreement by accepting the position of DGOM; and that the Carrier did not have the legal right to unilaterally abrogate this Agreement (Employees' Submission p. 6; Employees' Rebuttal p. 3). The Organization submits evidence of this Agreement in Employees' Exhibits T-1, T-2 and T-3, written statements from L. Christiansen, N. J. Scribner and F. Rosetta. In direct contradiction to the Organization's view is Carrier's Exhibit "P" pages 3 and 4, statements by B. G. Hanke and R. A. Smith. A further contrary view is found in Carrier's Exhibit "Q", p. 3, in the statement of W. A. Irwin of the IAM. It is settled beyond question by a great number of awards of this Board that this Board does not resolve issues of credibility. It is also settled beyond question that in matters such as the instant case, the Organization has the burden of proving its case to the Board. From the entirety of the record before us we cannot resolve the conflict in evidence in this case. Because the burden of proof is on the Organization, we must find against the Organization.

We are cognizant that the Organization contends that a further element of proof that there was such a verbal agreement is the fact that the Carrier complied with the conditions of the Agreement for a number of years in paying the subsistence allowance to Claimant Quaney for seven years and Claimant Christiansen for over five years (Employees' Submission, p. 11). The Carrier submits, through the above-mentioned statements of Messrs. Hanke, Smith and Irwin, that payment was made not in furtherance of any alleged verbal agreement, but in accordance with a rationale pertaining to the transient nature of the welding plants before the move to the new permanent welding facility at Amarillo. We quote, in part, from the statements:

"... Mr. Smith did not ever tell me that the coaches or the monthly expenses would be a permanent arrangement. I also understood that the coaches and, or the living expenses

"were not the results of any agreement for the machinist, but that it was rather an accommodation by the company, because of the welding plants being transit. At the time I hired out on the plant, there was fifty cents an hour difference in pay between the shop and the welding plant pay and that was the only agreement that I was made to understand was of a permanent nature.

B. G. Hanke"

Carrier's Exhibit "P"
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". . . Mr. Cunningham is incorrect or is being misled when he states that furnishing living cars or expenses were part of the compensation of any position at the welding plants, and no one was promised this at anytime.

The welding plants were a maintenance-of-way facility and the maintenance of way employes of this system gang were furnished outfit cars, by agreement, since the gang had no permanent headquarters. When the welding plants were permanently headquartered in Amarillo in December of 1973, the Maintenance of Way agreement no longer required the furnishing of outfit cars, or living quarters.

The furnishing of outfit cars to the Diesel Generator Operator Mechanics of the Machinist and Electrician's Craft was only a matter of equity as they also had no permanent headquarters, and were transferring over the system with this maintenance of way gang.

R. A. Smith"

Carrier's Exhibit "P"
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". . . Due to the unique circumstances of the Carrier's operation of its rail welding facilities account it being a portable one moved from one location to another on its System, the Carrier unilaterally instituted payment of such

"living quarters allowance; such being terminated when the transient nature of such operations ceased in 1973 upon establishment of a permanent type shop operation at Amarillo, Texas . . .

William A. Irwin"

Carrier's Exhibit "Q"
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The above quoted writings submitted by the Carrier give views concerning why payments were made to the Claimants and why they were stopped. We find that the fact that payments were made for this long period of time cannot be construed as resolving the issue of credibility. And, we thus must deny the claim.

A W A R D

Denied.

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 May, 1976.