

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10089
Docket No. 9736
2-BN-CM-'84

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated Rule 7(b) of our Current Agreement effective April 1, 1970 when they failed to compensate Minot Carman Marshall Gooch actual necessary meal expenses for the months of May and June, 1981 incurred while performing road service away from home point.
2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Carman M. Gooch in the amount of \$32.24 for the month of May, 1981 and \$54.59 for the month of June, 1981.

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 employes 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 Claimant, Carman Marshall Gooch, submitted an Employee Expense Account for the months of May and June, 1981. Both were denied because noon meals were included, and the Carrier ruled that such payment is made only in cases of emergency.

The Organization asserts the Carrier violated the terms of the controlling Agreement in refusing payment as provided for in Rule 7(b), which reads:

"(b) If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that, in no case, shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employee from working his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. Employees will be called as nearly as possible one (1) hour before leaving time and on their return, will deliver tools at point designated."

The Organization contends there is no question the submitted expenses were actual and necessary. It argues that Rule 7(b) is clear and unambiguous and that, when employees who are regularly assigned to shop or repair of track are called to perform work away from their regular assigned point to make repairs to cars which have been set out of a train because of defects, the repair of these cars constitute an emergency. Arguing in the alternative, the Organization claims the Carrier has always paid for the noon meal when carmen are sent from their home point to repair cars which have been set out for mechanical defects. This practice continued until 1979 when it was discontinued, according to the Organization, on five divisions. Nevertheless, it was continued on nine other divisions until May, 1981. Thereafter, and in accordance with Public Law Board No. 1540, involving another Carrier, the Organization states it was determined that regular payment for noon meals over a sufficiently extended period represents a past practice.

The record as reviewed by the Board establishes that the Carrier has, in the past, paid for noon meals regardless of what work was performed. Rule 7, as stated above, deals exclusively with emergency road work and associated circumstances. The language is clear and unambiguous and, as such, its meaning must be given full effect, and the actions of either party cannot change this expressed intent.

From the inception of this claim, the Organization has made reference to an emergency situation. Its initial denial Carrier made reference to "emergency derailments," but subsequently this was properly amended to "cases of emergency." Additionally, the Carrier has contended the Claimant did not perform emergency road work on the dates in question. The Organization, as seen above, has advanced two arguments in behalf of the Claimant asserting the assignments were emergency situations and, in the alternative, claimed that Rule 7(b) makes no reference to emergency, therefore it is applicable regardless of the work involved.

The record before the Board reveals no evidence to support a finding the Claimant was engaged in work other than normal road work. Clearly, had we found the work in question was of an emergency nature, we would have sustained the claim. The Carrier, by its own admission, improperly allowed such payments regardless of the work involved. The Organization acknowledges these payments were terminated for all divisions by April 29, 1981. Faced with clear and unambiguous language, this Board will not look beyond the clear intent of the parties. Obviously, some road work may involve emergency situations and, in such cases, payment is proper and should be forthcoming. We find no evidentiary basis to so conclude for the work in question. We will, therefore, deny the claim for the reasons set forth above.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1984.