Award No. 4245
Docket No. 4196
2-CMStP&P-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

CHICAGO, MILWAUKEE, St. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, unjustly denied payment of noon hour meals to Communication Crewmen, V. O. Rich, D. E. Everett, L. M. Sieler, R. W. VanWinkle, E. L. Winters, H. W. Gaskell and A. J. Gangl, on November 9, 10, 11, 15, 16, 17, 18, 22, 29 and 30, 1960.

2. That on the above listed dates, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company deprived Communication Crewmen, V. O. Rich, D. E. Everett, L. M. Sieler, R. W. VanWinkle, E. L. Winters, H. W. Gaskell and A. J. Gangl, of their right to use the Camp Crew Boarding Cars to prepare hot noon hour meals for themselves, and they were required to carry cold lunch packs to points away from their home station.

3. That when the Chicago, Milwaukee, St. Paul & Pacific Railroad Company required the Communication Crewmen, V. O. Rich, D. E. Everett, L. M. Sieler, R. W. VanWinkle, E. L. Winters, H. W. Gaskell and A. J. Gangl to carry cold lunch packs, they denied them the right to use their camp boarding cars to prepare a hot meal, and further denied them compensation for the lunch packs, in violation of Rule 28 of the Electrical Workers Agreement, effective September 1, 1949, which is controlling.

4. That accordingly the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be ordered to compensate Communication Crewmen, V. O. Rich, D. E. Everett, L. M. Sieler, R. W. VanWinkle,

E. L. Winters, H. W. Gaskell and A. J. Gangl on the days enumerated above, at $1.00 per lunch pack.

EMPLOYES' STATEMENT OF FACTS: The electrical workers names in the employes' statement of claim, hereinafter referred to as the claimants, were employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier as communication crewmen.

A boarding car located at Avery, Idaho was their headquarters.

On the days enumerated in the claim, the claimants were assigned to make repairs on equipment near Falcon, Idaho, which is a distance of 12.4 miles from Avery, Idaho.

The employes furnished their own food and drink while eating in the boarding car. If away from their home station (boarding car) the carrier either returns such employes to their home station for meals or reimburses them for the expense of their meals.

On the days involved in this dispute, the carrier would not permit the claimants to return to their boarding car to prepare a hot meal for themselves, but instead required them to eat cold sandwiches away from their boarding car. The carrier likewise refused to reimburse the claimants for the expense of their cold lunches.

This dispute was handled with all carrier officers authorized to handle disputes with the result that they declined to adjust it.

The agreement, effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that under the clear and unambiguous provisions of Rule 28 of the controlling Collective Bargaining Agreement, reading:

> "Employes regularly assigned to road work whose tour of duty is regular and who leave and return to home station daily (a boarding car to be considered a home station), shall be paid continuous time from the time of leaving the home station to the time they return whether working, waiting or traveling, exclusive of the meal period, as follows:
>
> "Straight time for all hours traveling and waiting, straight time for work performed during regular hours, and overtime rates for work performed during overtime hours. If relieved from duty and permitted to go to bed for five (5) hours or more, they will not be allowed pay for such hours. Where meals and lodging are not provided by the Railway when away from home station, actual expenses will be allowed.
>
> "The starting time to be not earlier than 6 A.M. nor later than 8 A.M.
>
> "Where two (2) or more shifts are worked, the starting time will be regulated accordingly.

In view of the foregoing the carrier submits that it is readily apparent that Rule 28 is not applicable in the instant case nor is there any other schedule rule or agreement which in any way supports the instant claim.

The carrier further submits that it is clear to be seen that by the claim which they have presented the employes are attempting to secure through the medium of a Board Award in this case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

This was not the first time members of this crew or members of other communication crews have carried their lunch, but instead, as indicated previously, it is not at all unusual for them to carry lunches for one reason or another and at no time has payment been allowed therefor. That there was no "expense" involved insofar as the claimants are concerned is readily apparent because had it been feasible to return the claimants to their home station for the noon meal on the dates of the claim they would have eaten a lunch prepared with food they had purchased whereas the lunch they carried and ate at the work location was also prepared with food the claimants, as members of the crew, had purchased. Therefore, all that occurred on the claim dates was, as indicated previously, that the claimants ate their lunch at the work location instead of at their home station and this is not an unusual occurrence nor is it one which has at any time in the past occasioned payment nor is there any schedule rule, including Rule 28, or agreement which provides for such payment.

It occurs to the carrier that the crux of the employes complaint in the instant case is not that the claimants carried their lunch because they have done this in the past on many occasions, nor is it the fact that they received no payment therefor because at no time in the past have they been allowed payment when they carried their lunch nor is there any schedule rule or agreement which provides for any such payment, but instead we believe the claimants were "put out" when they could not return to their home station but as the carrier has pointed out this was not feasible. On the dates of the claim the claimants were working from 7 to 10 miles away from their home station at a location which was not accessible by truck and in view thereof the only transportation to and from their home station was by motor car, the use of which was dependent upon train movements, etc. thereby creating a situation whereby an unreasonable length of time would have been consumed in traveling to and from the home station for the noon meal.

It is the carrier's position that there is absolutely no basis for the instant claim and we respectfully request that the claim be denied.

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.

By this claim seven named communication crewmen ask that they each be compensated at $1.00 per lunch pack for each of ten specified days because the carrier **denied** them the right to use the camp crew boarding cars to prepare hot noon meals and **required** them to carry cold lunch packs to points away from their home station. Rule 28 is cited in support of the claim.

The carrier rejected the claim on the property on the grounds that Rule 28 was not applicable and that there was no other rule or agreement that would support the demand.

Insofar as applicable to this case, Rule 28 merely obligated the carrier to provide, equip and maintain appropriate boarding cars, which were to be considered as the home station of the claimants, and that "where meals and lodging are not provided by the Railway when away from home station, actual expenses will be allowed".

It appears that all meals eaten by the members of the crew at their boarding car were prepared with food purchased by them and that they also purchased the supplies for their cold lunches on the days in question. They were merely prevented from returning to the boarding car for their noon meals because of the distance from their place of work and the lack of transportation facilities. They were not, however, employed away from their home station, within the meaning of Rule 28.

The Employes have attempted to bring into the record for the first time by means of their Rebuttal Submission six exhibits, calculated to show past practices on the property and an agreed settlement of a prior claim, alleged to be comparable to the one presently under consideration. Awards too numerous to list have held that Circular No. 1, adopted by the National Railroad Adjustment Board on October 10, 1934, precludes us from considering these showings. Merely for the purpose of again emphasizing the importance of strict compliance with the requirements of that directive we quote from the findings of this Division in its Award No. 2374:

> ". . . each party in its original submission is required. (1) to set forth briefly all relevant facts and documentary evidence in exhibit form, (2) quote the agreement and rule provision involved, (3) set forth all data submitted in support of the party's position, and (4) affirmatively show that the same was presented to the adverse party or his representative."
>
> "Procedural rules are necessary to expedite the work of the Division. Unless they are enforced, their purpose is wholly defeated and the presentation of disputes becomes chaotic and interminable . . . Such results are contrary to the expressed purposes of the Railway Labor Act."

By resolution adopted on March 27, 1936, this Division went on record as requiring strict compliance with said Circular No. 1, "except in extreme cases, and then only by action of the Second Division". There is no showing that any such exception was authorized in this case, and the claim must therefore be denied for failure of the organization to discharge the burden of proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June, 1963.