

Award No. 5001

Docket No. 4910

2-GN-EW-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the Carrier failed to reimburse Electrician C. R. Peterson for actual expenses incurred while performing service for the Carrier away from assigned headquarters during the month of February, 1964.

2. That accordingly, the Carrier be ordered to compensate Electrician G. R. Peterson in the amount of 35.00 (dollars)

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, employe Electrician G. R. Peterson, hereinafter referred to as the claimant, as electrician on Electrical Crew No. 1 with assigned headquarters at St. Paul, Minnesota.

During the month of February 1964, the carrier assigned the claimant to perform duties in line with his classification away from headquarters at points which included Willmar, Minnesota, and St. Cloud, Minnesota.

Claimant incurred expenses in the amount of 35 dollars for meals and lodging while working at St. Cloud, Minnesota.

This dispute has been handled with all carrier officers designated to handle such matters, all of whom have declined to adjust it.

The Agreement dated July 1, 1951, as subsequently amended, is controlling.

POSITION OF EMPLOYES: St. Paul, Minnesota, is the designated headquarters of Electrical Crew No. 1 to which the claimant is assigned as per schedule agreement.

that to which they clearly were entitled under the contract, it could not be successfully argued that the employees thereafter were estopped from insisting upon their contract rights. The carrier is free to grant more than that which it is contractually required to provide, but we cannot hold, under the guise of interpreting the agreement, that it thereby has become obligated to continue doing so." (Emphasis ours.)

**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 the claimant actually and necessarily incurred meal and lodging expenses at St. Cloud, Minnesota, during February, 1964. It has failed to carry this burden.

2. Under the plain meaning of the language used in schedule Rule 10, the carrier is obligated to reimburse employees only for the meal and lodging expenses actually and necessarily incurred away from headquarters. The meal and lodging expenses claimed by the claimant were not necessarily and actually incurred, and in fact, are wholly fictitious.

3. Several prior awards of this board hold that the words "actual necessary expenses" do not embrace within their meaning the type of fictitious costs which the claimant is claiming in the instant case.

4. This board has no authority to rewrite Rule 10 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.

5. Supervisors of electrical crews have no authority to negotiate binding interpretations of the schedule rules or any other collective bargaining agreements. Thus, any benefits which they might arrange to grant to their crews which are beyond the benefits prescribed by such agreements would be completely irrelevant and immaterial to the issue presented in the instant case.

6. Evidence is included in the record which clearly shows that the carrier's highest designated appeal officer has never agreed that system electrical crew employees are entitled to an arbitrary allowance of \$2.50 per night while staying at their homes away from headquarters.

7. The organization has produced no competent evidence to support its broad, general allegation that there is some long-standing practice under which the carrier has "reimbursed" system electrical crews and other traveling employees for the type of fictitious expenses which the claimants are now demanding.

8. But, it would make no difference even if there had been such a practice, for no amount of practice could supersede the clear meaning of the contractual language in question.

For the foregoing reasons, the carrier respectfully requests that the claim of the employees 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.

This claim is for expenses incurred by Claimant, an electrician, while performing service at St. Cloud, Minnesota, during February 1964. The controlling provision, Rule 10, provides that an employe on road service away from headquarters will be allowed "actual necessary" expenses where meals and lodging are not furnished by Carrier.

The only question here is whether the expenses claimed were "actual necessary", for it is undisputed that Claimant was away from headquarters and not furnished meals or lodging. In determining that question, the fact that Claimant maintained a home for his family and himself at St. Cloud is not controlling. He is entitled under Rule 10 to an allowance for actual expenses incurred while in St. Cloud whether or not he slept or dined in his own home there.

The defect in Petitioner's case is that there is no breakdown or analysis as to what out-of-pocket expenses were incurred for Claimant's own meals and lodging at his house. Awards 3658, 3799, 4870 and 4871 of this Division as well as Awards 10923 and 12120 of the Third Division make it clear that we are not entitled to consider any equities or to speculate on what the actual necessary expenses might have been. Claimant is entitled to reimbursement for only the actual out-of-pocket cost of his meals and lodging and not for some arbitrary figure to which he thinks he is entitled.

The evidence of past practice regarding staying at home allowances is not sufficiently comprehensive to establish a positive commitment on Carrier's part. It does not, in any event, affect the question of what "actual necessary" expenses were incurred since Rule 10 is unambiguous in that regard.

We have no alternative but to deny this claim for want of proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December, 1966.