Award No. 5002
Docket No. 4919
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 Communication Crew Lineman Keith Kirkhorn for actual expenses incurred while performing service for the Carrier during the month of January, 1964.

2. That accordingly the Carrier be ordered to compensate Lineman Keith Kirkhorn in the amount of $213.50.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, employed Lineman Keith Kirkhorn, hereinafter referred to as the claimant, as communication crew lineman, with district limits from Bainville, Montana, to Seattle, Washington, plus all branch lines in that area.

During the month of January 1964, the carrier assigned the claimant to perform work in line with his classification at points which included Whitefish, Montana.

Claimant incurred expenses in the amount of $213.50 for meals and lodging while working at or near Whitefish, Montana, and this amount has not been reimbursed to him.

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 amended is controlling.

POSITION OF EMPLOYES: Under the terms of the agreement between the Great Northern Railway Company and System Federation No. 101, Rule No. 10 reading in pertinent part:

"Hourly rated employes regularly assigned or when called for road service away from headquarters will be paid from the time

3. Under the plain meaning of the language used in the schedule agreement, the carrier is obligated to reimburse employes only for the meal and lodging expenses actually and necessarily incurred in connection with their employment. The breakfast, dinner, lodging and weekend and holiday lunch expenses claimed by the claimant were not actually and necessarily incurred and, in fact, are wholly fictitious.

4. 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.

5. This board has no authority to rewrite the parties' schedule agreement under the guise of interpretation. It must limit its function to applying the agreement in accordance with the plain meaning of the language contained therein.

6. The so-called "Memorandum of Agreement dated May 11, 1956", which the organization has cited in support of its position, is completely irrelevant and immaterial to the issue presented in the instant case. In attempting to have the memorandum applied without regard for its context or manifest intent, the organization is acting in direct conflict with the universally recognized principle of contract construction that the various sections of the parties' collective bargaining agreements must be construed together and effect given to all parts so that they are consistent and sensible.

7. Supervisors of electrical and communications 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 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.

8. Evidence is included in the record which clearly shows that the carrier's highest designated appeal officer has never agreed that employes working under the parties' schedule agreement are entitled to an arbitrary allowance of $2.50 per night while staying at their homes.

9. The organization has presented no competent evidence to support its broad, general allegation that there is some long-standing practice under which the carrier has reimbursed communications crews and other traveling employes for the type of fictitious expenses which the claimant is now demanding. Some of the evidence which it has presented actually confirms the fact that there never has been such a practice.

10. 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 employes 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 is a claim under Rule 10 for expenses incurred by Claimant, a communications crew lineman, while performing service for Carrier at Columbia Falls and Whitefish, Montana.

Rule 10 provides, in part, that an employe on road service away from headquarters will be allowed "actual necessary" expenses where meals and lodging are not furnished by Carrier. That Claimant during January 1964 was away from headquarters on Carrier's service and was not furnished lodging and meals is not in controversy. The critical question is whether the amount claimed represents "actual necessary" expenses within the meaning of Rule 10.

While at Columbia Falls and Whitefish, Claimant slept and had breakfast and dinner with his family in his trailer. We do not agree with Carrier that he moved the trailer to those locations for his own convenience, but, in any event, that point is not controlling for if the record shows that he incurred actual expenses, they must be allowed regardless of where he slept in Columbia Falls and Whitefish or whether he ate his meals in a restaurant, trailer or elsewhere.

The difficulty here is one of proof rather than of principle. Claimant has not established what actual expense he incurred for lodgings or for the meals he had with his family in the trailer. If he had and they were not out of line, we would have sustained the Claim but, in the absence of such proof, we have no alternative under Awards 3658, 3799, 4870 and 4871 of the Second Division as well as Third Division Awards 10923 and 12120 but to disallow those expense items. These awards make clear that we are not at liberty to consider any equities or to speculate on what the actual necessary expenses for such meals and lodging might have been. We consider it desirable to follow precedents that are as consistent as those cited above on the point in issue, whether or not we might have reached a different result if this had been a case of first impression.

The evidence of past practice regarding trailer allowances is not sufficient in scope or particularity to establish a positive commitment and does not affect, in any event, the question of what "actual necessary" expenses were incurred since Rule 10's requirement in that regard is clear and definite.

We will sustain the claim only to the extent of the workday luncheon expenses listed in Claimant's statement to Carrier; these meals were not taken at home.

AWARD

Claim sustained only to the extent of $32.20, the expense incurred for 22 workday lunches.

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.

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