

Award No. 5665

Docket No. 5469

2-GN-EW-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. Carrier has violated the rules of the current agreement when it failed to reimburse Electrician Richard Peterson for the entire amount of expenses as specified in the Schedule Rules which were incurred while performing service for the Carrier during the month of October, 1965.

2. That, accordingly, the carrier be required to compensate the aforementioned employee in the amount of \$51.48.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the Carrier, employs Electrician Richard Peterson, hereinafter referred to as the Claimant, as a regular assigned member of the Carrier's System Electrical Crew No. 8. This crew is headquartered in Seattle, Washington, and during the month of October, 1965, the Claimant was assigned to work in his classification at points which included Skykomish and Wenatchee, Washington.

At the end of the month of October, 1965, the Claimant submitted an expense account in the amount of \$81.90 to the Carrier in accord with Carrier instructions and based on the daily rate as specified by the Schedule Rules. These expenses were incurred at the point of Skykomish, Washington which is located approximately 155 miles from Claimant's assigned headquarters. The Claimant was assigned to outfit cars during the period of the instant claim, and meals were not furnished by the Carrier. Nonetheless, the Carrier elected to delete the sum of \$51.48 from the Claimant's expense account for the month of October, 1965, and consequently, on 18 working days the Claimant was only reimbursed for one meal per day at the rate of \$1.04, instead of at the daily rate of \$3.75 as provided for in the current agreement.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the Carrier, all of whom have declined to make satisfactory adjustment.

outfit cars" classification theory relieves it of any such burden. Indeed, all the Organization has been willing to provide is a few markings in the expense account booklet and certain general allegations that these expenses were "incurred" simply because "the Carrier did not furnish meals" (see Carrier's Exhibits 1 and 5). In fact, it wasn't even alleged that these so-called expenses were "incurred" until the present claim was advanced all the way up to the Carrier's highest appeal officer. But this allegation does not change reality and is completely false insofar as it attempts to create the impression that the claimant really spent \$51.48 to purchase breakfast and dinner meals at Skykomish during the period involved in the instant case. As pointed out earlier, the claimant lived and ate his breakfasts and dinners at home with his family during the time in question and the \$51.48 expense he is claiming for these items is wholly fictitious and, in fact, were not incurred. Therefore, aside from being barred by failing to comply with either the language or purpose of Rule 65(b), this claim is also barred due to the Organization's inability to sustain the burden of proof required by the afore-cited awards.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The Organization has failed to carry its burden of showing any contractual language which requires the Carrier to pay for meals consumed by an employee who lives and eats at his away-from-headquarters home and residence.

2. The Organization's so-called fixed "employees in outfit cars" classification theory, that attaches compulsory payment by virtue of assignment alone, is contrary to the express language and intended purpose of Rule 65(b), and constitutes an attempt to gain revision by interpretation instead of negotiation.

3. Schedule Rules 10, 15 and 65(b) complement each other and must be interpreted together so as to achieve the common purposes for which they were designed.

4. The present claim makes an additional income provision out of a rule that was only designed to reimburse an employee for meal expenses that are necessarily incurred because that employee is sent away from his home station or place of residence to perform work and is thereby forced to live in outfit cars and purchase his meals.

5. Numerous Board awards, as well as cases abandoned on this property, show that the instant claim for breakfast and dinner meals that were consumed at home lacks the support of both law and practice.

6. The Organization has failed to produce any evidence that substantiates or lends validity to the breakfast and dinner meal expenses claimed herein.

For the foregoing reasons, the Carrier respectfully requests that this claim be denied.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the / whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimants are members of a System Electrical Crew, who were assigned to "outfit cars" where meals were not furnished during the month of October 1965. Each filed claims based upon the daily rate of \$3.75 under Rule 65 (b) of the effective Agreement, portions of which were disallowed by Carrier because Claimants were actually residing at their respective homes and not purchasing all meals for which the meal purchase allowance was claimed. Petitioner contends that Rule 65(b) unequivocally provides for payment of the daily allowance when meals are not furnished by the Carrier to employees in "outfit cars" without authority to make deductions in the absence of clear proof of actual expenditures.

The precise issue involved in this dispute has already been considered by this Division in our Award No. 5435, which arose out of a similar dispute between the same parties. The Findings therein in part stated as follows:

"The rule is clear and explicit that when meals are not furnished the employee will receive \$3.75 per day allowance to purchase meals. No limitation is placed on the employee as to whether he has his meals at home or among friends."

Accordingly, we find our Award No. 5435 controlling precedent in the instant dispute, and the claim will be sustained.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1969.