

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

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation (Conrail) Indiana Harbor Belt Railroad declined to reimburse Electrician Tom Mathewson for expenses incurred for meal periods while performing work away from headquarters.
2. That accordingly, the Consolidated Rail Corporation (Conrail)-Indiana Harbor Belt Railroad, be ordered to reimburse Electrician Tom Matthewson in the amount of \$53.50 for actual expenses on January 2, 3, 4, 9, 10, 11, 14, 17, 18, 22, 24, 28, 29, 30 and 31, 1980 plus 9.5% interest compounded quarterly from the date of denial.

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.

The pivotal question herein is whether Carrier was required to reimburse Claimant for meal expenses when he was away from his home point and performing services on the claimed dates.

Claimant contends that, irrespective of where an employee started or finished his work day, covered affected employees were consistently reimbursed for meal expenses when they were away from their home point or home station at mealtime. He argues that distance was never used as a criterion for determining meal reimbursement and thus, this employment condition accrued to employees as a pre-existing and contractually protected right. He avers that when Carrier issued a policy modification bulletin on October 31, 1979 stating that employees would not be reimbursed lunches if they were working within their assigned territory, it impermissibly and unilaterally amended an existing condition of employment which violated the Section 6 procedures of the Railway Labor Act of 1926, as amended. He asserts that Carrier never disproved his assertions that reimbursed meal expenses were always allowed prior to the October 31, 1979 policy change notice, when employees were away from their home point and performing services and as such the claim is an enforceable right.

Carrier contends that neither Rule 14 or 15 provides for reimbursement to employees for noon day lunch expenses when their advertised positions clearly intend their travel of fifteen (15) and twelve (12) miles respectively and they start and complete their regular tour of duty within their advertised eight (8) hour assignments. It argues that Claimant never submitted meal reimbursement claims for the first ten (10) months of 1980 and his failure to do so underscores its position that such expenses were unallowable. It asserts that the language of Rule 15(h) is not clear and unambiguous as contended by Claimant and the defining words in this provision "while away from home points" could mean a few feet away from the employee's home point, which leads to a ludicrous application. It avers that it reinstated in January of 1981 its former practice of applying Rule 15(h) by reimbursing employees who are paid on a monthly basis the expenses incurred for meals when such employees were required to travel outside a ten (10) mile radius of headquarters.

In our review of this case we concur with Claimant's position. Rule 15(h) which is germane to our determination is referenced as follows:

"Where meals and/or lodgings are not furnished by the railroads, or when the service requirements make the purchase of meals and/or lodging necessary while away from home points, employees will be paid necessary expenses."

Careful reading of this rule does not indicate whether away from an employees' home point is three (3) miles or ten (10) miles and the practice on the property appears to be that no specific distance was consistently and explicitly observed. Carrier has not contested Petitioner's assertion that he was always reimbursed lunch expenses prior to the issuance of the October 31, 1979 policy change notice and its correlative contention that his failure to submit reimbursement claims for the first ten (10) months of 1980 demonstrates a lack of past practice, is without support. The primary concern before this Board is whether Carrier reimbursed Claimant for meal expenses prior to the aforesaid policy notice and the evidence strongly shows that it consistently tendered such compensatory allowances. It was incumbent upon Carrier to prove convincingly that it never reimbursed Claimant for similar expenses prior to October 13, 1979 and it did not do so. We will sustain the claim only for actual meal expenses incurred.

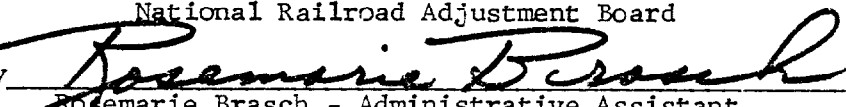
A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of April, 1983.