

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (The Brotherhood Railway Carmen of the
(United States and Canada, A.F.L. - C.I.O.
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated Rule 7(b) of our Current Agreement effective April 1, 1970 when they failed to compensate Livingston Carmen L. S. Blatter, J. S. Molyneau, H. E. Harper and A. S. Villburn actual necessary meal expenses for the month of November, 1979 incurred while performing road service away from home point.

2. That accordingly, the Burlington Northern, Inc., be ordered to compensate Carman L. S. Blatter \$4.55 for November 3, 1979, Carman J. S. Molyneau \$8.64 for November 20 and 22, 1979, Carman A. S. Villburn \$11.60 for November 5, 6 and 8, 1979 and Carman H. E. Harper \$45.50 for November 1, 5, 6, 8, 9, 13, 14, 16, 19, 20, 21 and 26, 1979.

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 employes 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.

Petitioner in this case contends that Carrier improperly withheld meal expenses for the month of November 1979 from Carmen who performed road service away from their home point. Petitioner relied on a portion of Rule 7(b) to support its claim. That Rule reads as follows:

"If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that, in no case, shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents employee from working his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. *****"

Petitioner also argues that for many years prior to November 1979, whenever Carmen were required to work away from their home point, regardless of what work was performed, they were always reimbursed for the noon meal. It finally argues that this long-standing practice gives meaning to Article 7(b) and that based on that long-standing practice, the claim should be sustained.

Carrier on the other hand contends that Carmen should not be paid for the noon meal just because they work on cars away from their home station. It argues that Rule 7(b) relied on by the Organization is part of the Emergency Road Work Rule and Section 7(b) must be read in conjunction with Section 7(a) of the Rule. The complete Rule reads as follows:

"RULE 7 - EMERGENCY ROAD WORK

(a) Other than as provided in paragraph (b) of this rule an employee regularly assigned to work at a shop, engine house, repair track or inspection point, when called for emergency road work away from such point, will be paid for all time from time ordered to leave home station until his return as follows: for all time waiting or traveling, straight time rate during home point working hours, time and one-half during home point overtime hours; for all time working, straight time rate during home point working hours, overtime rate as per Rule 6 during home point overtime hours.

(b) If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that, in no case, shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employee from working his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. Employees will be called as nearly as possible one (1) hour before leaving time and on their return will deliver tools at point designated."

Carrier states that all road work is not emergency work, so therefore, employees who work on the road doing the ordinary work of Carmen are not entitled to meal payments. Carrier further argues that even if Carmen have been reimbursed for noon meal expenses in the past when they worked away from their home points, those payments were in error and not approved by the people of the Railroad charged with the responsibility of interpreting the Agreement.

We have carefully reviewed the record of this case and the awards submitted by each side and must conclude that the basic labor relations principle applicable here and the bulk of the prior awards support the Carrier's position.

It is clear from a reading of all of the awards submitted, both denial awards and sustaining awards, that they almost universally adopt the principle that not all road work performed by Carmen away from their home point is emergency work. This Division adopts that position.

It is also the opinion of this Division that only when an employee is called on emergency road work does Rule 7(a) and (b) apply. It does not apply to Carmen when they are performing road work not of an emergency nature.

Petitioner contends that for decades, Carmen have been paid for the noon meal when working away from their home point regardless of the work performed. We do not doubt that statement. In spite of it, that practice cannot be raised to the level of a practice that modifies the clear language of the Agreement. The language of Rule 7 is clear. It applies to Carmen when performing emergency road work. It cannot be construed to apply when Carmen are only performing normal craft duties away from their home point. In the instant case, the record reveals that the Claimants involved reported to work at their usual reporting point and were transported to the work site where the cars to be worked on were located. The work was performed, or a day's work put in, and the Carmen were then transported to their reporting point where they punched out and went home. The situation that exists here is not of an emergency nature, as contemplated by Rule 7. We therefore shall deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1985.