Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11074
SECOND DIVISION Docket No. 10056
2-BN-CM-'86

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Burlington Northern Railroad Company

Dispute: Claim of Employes:

1. That the Burlington Northern Railroad Company violated Rule 86(c) of our current Agreement, effective April 1, 1970, when they failed to compensate Denver, Colorado Carman J. R. Munoz actual necessary meal expenses for May 2, 3 and 31, 1981, incurred while performing wrecking service on his regularly assigned rest days.

2. That accordingly, the Burlington Northern Railroad Company be ordered to compensate Carman J. R. Munoz in the amount of $3.60 for May 2, 1981, $15.00 for May 3, 1981 and $4.00 for May 31, 1981, which totals $22.60 for the three (3) days claimed.

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.

The Claimant is employed as a Carman at Carrier's Denver Terminal, in Denver, Colorado. In addition to his regular assignment, Claimant is also a member of the Denver Wrecking Crew. The Claimant's regular work week is Monday through Friday, 7 A.M. to 3:30 P.M., with Saturday and Sunday as rest days.

On his regularly scheduled rest days of May 2, 3, and 31, 1981, the Claimant performed wrecking work on two (2) separate derailments which occurred at 46th and Washington Avenue and in South Denver respectively. Said wreck sites are both within the yard limits of the Denver Terminal.

While working as a wreck crew member on these three (3) rest days, the Claimant spent a total of $22.60 on meals ($3.60 for dinner on May 2; $15.00 for breakfast, lunch and dinner on May 3; and $4.00 for breakfast on May 31). On June 3, 1981, the Claimant submitted an Expense Claim to the Carrier for meal allowance for the entire amount as cited. Said Expense Claim, however, was denied.

On June 16, 1981, a formal Claim was filed in protest of the Carrier's action herein. Said Claim was also denied; was properly appealed; and is now the basis of the instant proceeding.

The Organization's basic position herein is that the Claimant was entitled to reimbursement for his meal expenses based upon Rule 86(c) of the parties' current Agreement which states as follows:

> "(c) Meals and lodging will be provided by the Company while crews are on duty in wrecking service."

In support of its basic premise, the Organization contends that Rule 86(c) is a specific contract provision which is clear and unambiguous. Furthermore, according to the Organization, Rule 7(e), of the Meal Rule, as cited by the Carrier, does not differentiate between meals which are to be provided for Carmen performing wrecking work inside or outside of yard limits since said Rule involves "Emergency Road Work" and the instant dispute involves "Wrecking Service" work. Therefore, the Organization maintains, Rule 86(c) is controlling in the instant dispute.

Continuing, the Organization next argues that the meal and lodging components of Rule 86(c) must be read as separate items and are to be construed disjunctively. According to the Organization, this means that once Carmen are called to perform wrecking work anywhere on the Carrier's system, they are entitled to expenses for both meals and lodging.

The Carrier reads Rule 86(c) more narrowly. In this regard, the Carrier views the conjunctive word "and" as requiring reimbursement of meal expense only when lodging is also required because the assigned Wrecking Crew members, in such situations, must perform work away from their home point, outside of yard limits. Accordingly, the Carrier contends that since both of the subject derailments occurred inside of yard limits, and since lodging was not required of any of the Wreck Crew members, then reimbursement for the Claimant's meal expenses, under these circumstances, is not a contractual entitlement.

However, when negotiating Rule 86(c), the parties were free to choose appropriate language in order to memorialize the complete extent and clear intent of their understanding regarding reimbursement for such employee expenses. Thus, when formulating Rule 86(c), the parties chose to utilize the conjunctive word "and" rather than the disjunctive word "or" for their purposes. This fact alone, and particularly in the absence of any counter-vailing past practice, is sufficient to convince the Board that the parties'

negotiators did not intend to reimburse meals of Wrecking Crews independent of lodging. Since the Claimant's wrecking work on the days in question did not require him to seek lodging away from home, we hold that he is not entitled to reimbursement for his meals.

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 3rd day of December 1986.

LABOR MEMBERS DISSENT

TO

AWARD NO. 11074, (DOCKET NO.10056)

(Referee Mikrut)

The Majority erred in reaching the Denial decision in this Award in stating:

> "This fact alone, and particularly in the absence of any countervailing past practice, is sufficient to convince the Board that the parties' negotiators did not intend to reimburse meals of Wrecking Crews independent of lodging."

The record in this dispute contained a clear, undisputed fact of a "countervailing past practice" wherein in the Local Chairman's initial letter of claim he stated:

> "It is also a well established past practice, that the Carrier pay for our meals regardless of where derailment occured."

It is obvious that since there were twenty-nine (29) months between the time that the Neutral heard the arguments of the Parties and the time he rendered this Award that he obviously misread, or disregarded

the record and forgot the Parties arguments.

For these reasons, we dissent.

R. A. Johnson

M. J. Cullen

Charles D. Easley

D. A. Hampton

Norman D. Schwitalla