Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12979
Docket No. 12799
96-2-93-2-150

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of Radio Maintainer S. F. McCullough, employed by the Consolidated Rail Corporation at Altoona, PA for expenses incurred for lunch when he worked away from his headquarters on September 26 and 30, 1991; in which claim the Employees contended that the Consolidated Rail Corporation violated Rule 4-H-1, past practice and Public Law Board 3358, Award No. 18 when they failed to compensate Claimant for his meal expenses when he worked away from his headquarters."

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.

The Claimant involved in this dispute was employed as a Radio Maintainer, with an assigned headquarters at Altoona, Pennsylvania. On the dates of claim the Claimant was required to work away from his headquarters' location. It is claimed that in violation of Rule 4-H-1, past practice, and Award 18 of Public Law Board No. 3358, that the Carrier failed to compensate the Claimant for meal expenses (lunch) incurred while away from his headquarters on each of the dates of claim.

Basically, it is the position of the Organization that the Claimant is entitled to reimbursement for a noon meal to the same extent that such payment is allowed to other Radio Maintainers at the Altoona, Pennsylvania, location when they are away from headquarters under a past practice that dates back to 1979. The Organization, as stated in a joint submission argument on the property, maintains that past practice should apply to the location, not the individual.

Rule 4-H-1 reads as follows:

"4-H-1. (a) Employees sent out on the road for service shall be paid from time reporting at designated point at the home station until they return to home station, at straight time and overtime rates in accordance with Rule 4-B-1.

(b) If during the time on the road an employee is given opportunity to rest five (5) or more hours, he will not be paid for such relief time. When necessary to travel to and from another point to secure lodging, such travel and/or waiting time will be paid for in accordance with section (a) of this rule.

(c) Employees shall not be paid less for this service than their bulletined hours at the home station at their hourly rate.

(d) When meals and lodging are not provided, actual reasonable expenses shall be allowed.

(e) No payments will be allowed to an employee for 'travel time' to or from work locations included in his relief assignment; within his seniority district."

It is the position of the Carrier that Rule 4-H-1 is not applicable to an employee working within an assigned territory and only covers employees required to work off their advertised territories. The Carrier urges that support for this position is found in both the past application of the Rule on the former Pennsylvania and Penn Central railroads and in the language of the Rule.

The Carrier says that in making reference in paragraph (a) of Rule 4-H-1 to Rule 4-B-1, the rule covering overtime, that the parties intended the Rule to only cover work beyond the normal tour of duty, and not noon meal expenses. The Carrier also says that support for its position is found in paragraph (b) of Rule 4-H-1, in that it deals with employees being given five or more hours of rest while on the road, or service that would be beyond that associated with a normal daily assignment.

The Carrier also submits that the language of paragraph (d) of Rule 4-H-1 specifically refers to "meals and lodging," and not to meals "or" lodging. It says that such wording is a clear indication that the Rule was intended to reimburse meal expenses only in conjunction with lodging expenses, and not expenses when an employee is away from headquarters at mealtime, but starts and ends the workday at his or her headquarters.

Contrary to the contentions of the Organization, the Carrier says Award 18 of Public Law Board No. 3358 does not support a finding that the Claimant is entitled to a noon meal allowance. The Carrier says that since the Claimant was not hired until February 11, 1991, or subsequent to the issuance of such Award, that he could not be considered as one of the employees in this Award, who, by past practice, received the disputed meal payment.

Lastly, the Carrier does not dispute that it did pay the Claimant for meal periods for five months prior to the instant claim. It says this was improper, and when the error was discovered that it was immediately corrected. The erroneous payments over the five months, the Carrier says, did not in any way establish past practice nor did it bind the Carrier to continue said payment.

The Question at Issue before PLB No. 3358, which resulted in its Award 18, Adopted March 20, 1985, was as follows:

> "Did the May 1, 1979 Agreement permit Consolidated Rail Corporation to discontinue the payment of meal expenses to employees on days when they are away from their headquarters at mealtime but they start and end their workday at their headquarters?"

In resolving the above question in the negative, PLB No. 3358, among other things, said:

"We find no material inconsistency between Rule 4-H-1 (d) and earlier contract provisions governing the property not owned by Conrail. Contrary to Carrier's position, therefore, we cannot validly conclude that paragraph 1 of Appendix C to the May 1, 1979 Schedule Agreement has terminated the disputed meal rights."

Nothing contained in the Findings and the Award of PLB No. 3358 is found by this Board to support the Carrier contention advanced to this Board that the payment of meal expenses to employees on days when they are away from headquarters at mealtime but start and end their workday at their headquarters was expressly limited to employees who were in service on the date Award 18 of PLB No. 3358 was issued or was adopted. The Award, in clear and concise language, stated that the Carrier was "to pay for the meals in question."

This Board finds no reason not the follow the determination of PLB No. 3358 in disposition of the instant claim. We will therefore hold that the Claimant is entitled to payment of noon meal expenses when away from his Altoona, Pennsylvania, headquarters to the same extent as is allowed other Radio Maintainers who have the Altoona Radio Shop as their headquarters and are being paid a noon meal expense when they are away from headquarters at meal time, but start and end their workday at such headquarters.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 2nd day of February 1996.