

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

St. Clair Smith, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that Mr. Roy Caraway, Engineer, Shovel 035, Work Equipment Sub-department, be reimbursed for personal expenses incurred in the amount of \$89.00 for the period March 24 to April 10, 1940, account failure of the Carrier to provide facilities in outfit car No. 4016 in accordance with Rule 65 of current Agreement.

**EMPLOYES' STATEMENT OF FACTS:** March 23, 1940, Mr. Roy Caraway was employed in the class of fireman, assigned to Shovel 019, Tularosa, New Mexico. On this date he received advice from Mr. F. A. Feikert, Division Engineer, that he was being promoted from position of fireman to position of engineer, Shovel 035, headquarters outfit cars, Escondido, effective Monday, March 25th, his instructions reading as follows:

"Will have fireman at Tularosa to start work Monday morning, March 25th, relieving you and you are to relieve J. C. Hamilton, Second Shift, Shovel 035 effective Monday, 25th. This shovel outfits now Escondido and shovel working lower Juniper Reservoir. Mr. Guy has instructed that Hamilton take his outfit with him and Car 1037 now being worked over in El Paso. Will be set Escondido for your use when completed which will take probably week yet. In meantime may be necessary for you to double up with Wm. Markle, Helper on Shovel 035, in his outfit."

Upon arrival at Escondido Mr. Caraway found Mr. Markle was assigned to outfit car SPMW 4016 as living quarters. Investigation developed the following conditions existing in Car 4016: There was no steel bunk to sleep in, there were cracks in the sides and roof of the car with cardboard nailed over same to prevent dirt, wind and rain from entering and the car was dirty and generally in an unsanitary condition.

Because of the unsanitary condition of Car 4016 and the absence of a bed in which to sleep, such as is required by rules of the Agreement, the car was not suitable to live in and consequently circumstances compelled Mr. Caraway to obtain board and lodging elsewhere. He secured quarters at Alamogordo where he boarded, traveling back and forth to the job daily. Expense accounts were submitted by Mr. Caraway for the period March 24 to April 10, 1940, in the amount of \$89.00 covering meals, lodging and automobile mileage, but payment was declined by the Carrier.

By letter dated June 26, 1940, (Employees' Exhibit "A") the Division Chairman presented to Carrier's Division Superintendent request that the

on the road away from his regular outfit; so that he could not and did not become entitled to reimbursement of any portion of his personal expense under the provisions of paragraph (a) of Rule 37.

Rule 65, the only agreement rule relied upon by the petitioner in support of the claim in this docket, imposes no obligation on the carrier to pay an employe's personal expenses under any circumstances; least of all when the employe, solely of his own volition and without authority, elects not to occupy the outfit car provided for his use, and chooses to live in quarters of his own selection some 22½ miles distant from his place of work.

The expense account submitted by the claimant included an item of \$24.50 for meals. The carrier was not required and could not be required under agreement rules, to furnish meals to the claimant had he occupied the outfit car which was assigned for his use. Obviously then, there could be no obligation to reimburse him for meals purchased at his own election and without authority. Even in the event the claimant had been directed by the carrier to go to Alamogordo to perform service away from his outfit car at Escondida, so as to bring the provisions of Rule 37 (a) into operation, the claimant would have been entitled only to the difference between the expenses actually incurred and what they would have been had he not been sent away from his outfit car.

The Division's attention is directed to the fact that the major portion of the \$89.00 expense account submitted by the claimant involves automobile mileage between Alamogordo and Escondida; 18 round trips of 45 miles each at 5¢ per mile amounting to \$40.50. Even though the claimant was authorized to live at a hotel or lodging other than the outfit cars he would not have been authorized to use his automobile to travel to and from work for the reason that carrier's trucks were available and used to carry employes to and from work.

### CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without merit and therefore respectfully submits that it should be denied.

**OPINION OF BOARD:** After extreme care in reviewing the scant and unsatisfactory factual showing contained in the ex parte submissions of the parties we find the following facts:

(1) The Carrier failed to provide claimant with an outfit car equipped in the manner and maintained in the sanitary condition described in Rule 65.

(2) The Carrier provided pick-up trucks at the points in question which were available to claimant.

The duty was upon the Carrier to provide claimant with a proper outfit car at the point in question. While at such car claimant was responsible for the cost of his maintenance. By implication, if not by its explicit terms, the contract manifests a mutual intention that when employes of the outfit-car class are separated from their cars by the Carrier, it will bear the difference between the out-of-pocket costs of the employes for board and lodging and the amount he would have been required to expend for maintenance had he remained with his car. Rule 37 (a) provides:

"(a) Employes assigned to outfit cars where boarding camps are maintained will, when sent out on the road away from their regular boarding outfits, be allowed expense accounts only for the difference between the expenses that they actually incur and what their expenses would have been had they not been taken away from their outfits."

In practical effect there is no difference between a case in which a worker is taken away from his car, and one in which the car is separated from the worker by the acts of the Carrier. We entertain the view that under either state of facts the Agreement contemplates that the Carrier will bear the difference in the workers' board and lodging costs.

It follows from the Findings made that the use of claimant's motor was rendered unnecessary by the Carrier transportation available to him. We do not intend to indicate whether that item of the claim would have been a proper charge against the Carrier if no such transportation had been available. It also follows that we are of the firm conviction that the employe has a just claim for the indicated difference in cost, but the factors necessary to a computation of that claim are not revealed by the Submission.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim as presented is disallowed with the recommendation that amount justly due the claimant be determined and paid.

#### AWARD

Claim disposed of per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1944.