

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that bridge and building painters under Foreman Lloyd Kord, Coast Division, be reimbursed for expenses incurred in obtaining meals during July and August 1941, in the amounts specified below:

| | |
|--------------------|---------|
| Percy Barwell | \$47.20 |
| Albert Herman | 51.45 |
| Henry DeGroote | 45.65 |
| Arthur O. Olsen | 23.25 |
| Fred J. Daigneault | 51.75 |
| James G. Riddell | 41.35 |

EMPLOYEES' STATEMENT OF FACTS: During the month of July 1941 the employees listed in the Statement of Claim were required and assigned to a camp car outfit and were moved from Tacoma, Washington to perform work at Kittitas, Washington.

No kitchen or dining car was furnished with the outfit and it, therefore, became necessary for the claimants to purchase their meals at restaurants from July 14 to August 26, 1941.

When employees are assigned and required to live in camp cars, such outfits are not complete without a kitchen-dining car. Prior to this instance all outfits were furnished kitchen-dining car. In the absence of such facilities it has been the practice to allow expenses for meals.

The agreement in effect between the Carrier and the Brotherhood is by inference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On or about July 8, 1941 there was organized on the Coast Division a paint crew. This paint crew consisted of a foreman and eight men namely:

| | |
|------------------|------------------|
| L. J. Kord | Jas. G. Riddell |
| F. J. Daigneault | Dave C. Holmberg |
| Albert Herman | Owen T. Bryant |
| Percy Barwell | Arthur O. Olson |
| Henry DeGroote | |

The outfit cars furnished this crew consisted of:

| | |
|----------|------------------|
| X-915076 | Tool car |
| X-916147 | Bath |
| X-907989 | Water |
| X-915087 | Bunk |
| X-915819 | Bunk |
| X-915858 | Bunk and Foreman |

Resulting from this claim having been submitted an investigation was conducted by the division officers and the information received indicates that when this outfit was first lined up there was a kitchen-dining car with it, however, by reason of the cook, whom the outfit had arranged with to do the cooking, not being satisfied with the way the car was fitted up she refused to accept the position and resulting therefrom the kitchen-dining car was not forwarded with the outfit.

Later on by reason of the crew requesting a kitchen-dining car, X-915841 was billed to them at Ellensburg August 21, 1941 but the information we have received indicates that after this car had been received the majority of the crew did not take advantage of it. As a matter of fact there were only two men who attempted to batch in the car, the remaining members of the crew continuing to buy their meals at a nearby restaurant.

The only rule introduced by the organization in support of this claim is current Maintenance of Way Schedule Rule 27 which is quoted in the carrier's Statement of Facts. In support of this claim General Chairman James in his communication of May 20, 1943 to Assistant to Chief Operating Officer Mr. F. H. Allard advises;

"Schedule Rule 27 is specific enough in its language; and you must agree that when the men had to leave their bunk cars and go as far as a mile and a half to find places to eat their meals, the management, we contend, is responsible for not having furnished the facility in which the men could prepare their own meals. The management's failure to provide that facility can only mean that it directed its employees to leave their headquarters to find places to eat."

To agree with what General Chairman James has said in the above quotation would be placing an interpretation on the rule which was not intended and insofar as our records are concerned has never been placed on that rule since it has been in existence.

The Board's attention is directed to the language contained in current Maintenance of Way Schedule Rule 27, particularly that part reading;

"* * * While away from headquarters or outfits by direction of the management."

Certainly it cannot be argued that the employees were away from headquarters or outfits by direction of the management when they left the outfit cars to go to a nearby restaurant to purchase their meals. It is the position of the management that the employees in question were not actually away from headquarters or outfits but even if they were it certainly cannot be argued that such absence was by direction of the management.

It is believed the information furnished herewith is sufficient to prove conclusive that there is no merit in the claim and the same should be declined.

OPINION OF BOARD: This is a claim by the System Committee, on behalf of six members of a paint crew, for reimbursement for expenses incurred in obtaining meals during the period July 14 to August 26, 1941. The claim is based on the failure of the carrier to furnish the crew with a kitchen-dining car during that period.

The controlling rules are No. 27 and No. 33 of the current agreement reading:

"RULE 27. EXPENSES—Employees will be reimbursed for cost of meals and lodging incurred while away from headquarters or outfits by direction of the Management whether off or on their assigned territory. This rule will not apply to the mid-day lunch customarily carried by employees, nor to employees traveling in the exercise of their seniority rights."

"RULE 33. CAMP CARS—It will be the policy to maintain camp cars in good and sanitary condition with sanitary bunks, and to provide sufficient ventilation and air space. All dining and sleeping cars will be screened when necessary. Permanent camp cars when used for road service will be equipped with springs consistent with safety and character of car and comfort of employees. Kitchen and dining cars will be equipped with stoves, and bunk cars will be equipped with mattresses. It will be the duty of the foreman to see that cars are kept clean and in a sanitary condition."

We think it is clear that the carrier violated Rule No. 33 in failing to furnish a kitchen-dining car during the period under dispute. See Award 2456. The carrier insists, however, it is not liable for expenses incurred by the employees under Rule No. 27 because they were not away from their outfit "by direction of the Management." In practical effect there is no difference between a situation where a worker is away from his outfit by direction of the Management and one where the car is separated from him by the act of the carrier. The members of the crew were, of necessity, separated from their outfit at meal times because of the failure of the carrier to supply a kitchen-dining car. See Awards Nos. 587 and 2456.

The carrier suggests that the claims are excessive, inasmuch as the members of the crew would have had to bear their pro rata share of the cost of operation and maintenance of a kitchen-dining car had one been furnished. In other words the carrier contends that the measure of recovery is the difference in such pro rata cost of operating and maintaining a kitchen-dining car and the cost of meals purchased by the respective members of the crew. It was so held in Award No. 2456. But that holding was made upon a rule which expressly provided for that measure of recovery. Rule No. 27, however, provides that "Employees will be reimbursed for cost of meals. . . ." The rule is too plain to be susceptible of construction. See Award No. 1231.

It is also urged, on behalf of the carrier, that the employees are not entitled to recover for cost of mid-day lunches. We think the contention is without substance. It would seem obvious that, in the situation we have here, "the mid-day lunch" is not such as is "customarily carried by employees. . . ." See Award No. 1446.

Again, the carrier suggests that after a kitchen-dining car was furnished the claimants they did not use it. If that be the fact it is beside the issue.

On the record, claimants are entitled to reimbursement for cost of their meals.

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 employee involved in this dispute are respectively carrier and employee 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 claims for meals from July 14th to August 26th, 1941 is sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1944.