

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that under the application of Rule 40 of the current Agreement Donald S. Field, electric welder, shall be reimbursed for expenses incurred during the period September 17th to 30th, 1943, inclusive in the amount of \$16.05 for purchasing meals away from his boarding outfit.

JOINT STATEMENT OF FACTS: Electric Welder D. S. Field is a member of a boarding car crew which travels throughout the entire system.

During the period September 17th to 30th, 1943, there was no cook in the outfit to which Electric Welder D. S. Field was assigned. Because meals were not available in the outfit, Field was obliged to purchase and eat his meals in restaurants in nearby towns, incurring an expense for meals during that period in the amount of \$16.05. He submitted his bill of expense to the Railroad and received payment of only \$7.41.

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

POSITION OF EMPLOYES: Electric Welder D. S. Field was and is regularly assigned to road service. In connection with the performance of that service, he was assigned to a boarding outfit wherein he lodged and wherein he procured his meals. During the period September 17th to 30th, 1943, inclusive, there was no cook in the boarding outfit to which Field was assigned, and because of that, Field was unable to procure his meals in the Boarding Outfit, which made it necessary that he purchase and eat his meals in restaurants in the town, thus incurring an expenditure in the amount of \$16.05. Schedule Rule 40 in effect governing payment for meals and lodging reads:

"40—MEALS AND LODGING EXPENSE—PAYMENT FOR

Employees taken away from their homes or headquarters to work elsewhere, except in the exercise of their seniority rights, and required to remain overnight, will be paid their actual reasonable expenses for meals and lodging unless provided by the Railroad."

Rule 40 above quoted specifically provides that employees taken away from their homes or headquarters (outfits are of course in conformity with Rule 33 (a) equivalent to headquarters) will be paid their actual reasonable expense for meals and lodging unless such meals and lodging are provided by the railroad. As stated Field was assigned to an outfit which was his headquarters, in which outfit he procured his meals. For certain reasons over which he had no control, meals were not available in that outfit during the period September 17th to 30th, 1943, inclusive. Since he was unable to procure meals in the outfit, he was in substance taken away from it insofar as pro-

curement of meals was concerned and was obliged to purchase his meals elsewhere, incurring expenses. That being so, he is under the application of Rule 40 entitled to reimbursement for the actual reasonable expense incurred.

That the Carrier recognizes the correctness and the justification of our position is evidenced from the fact that it actually reimbursed Field in part for the expense incurred or the estimated difference between what the meals would cost in the outfit cars and that which Field actually paid in purchasing the meals in the restaurants. We maintain, however, that that manner of reimbursing an employee for expenses incurred is not in keeping with the provisions of Rule 40. Rule 40 specifically provides that the employee will be reimbursed for actual reasonable expenses incurred. It does not provide for compromise. We are sustained in that our position by a number of awards emanating from your Board. We refer particularly to Award Number 2510.

For reasons set forth we maintain that the claim is just and reasonable and respectfully request that it be allowed.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and is hereby made a part of the question in dispute.

Opportunity for oral presentation and argument is desired.

POSITION OF CARRIER: D. S. Field was an electric welder, a member of a boarding car crew, traveling throughout the entire System. From September 17 to 30, 1943 there was no cook in the outfit to which Field was assigned, consequently no meals were served in the car, and Field was obliged to go to town, and purchase his meals in restaurants. For these meals he paid \$16.05. The cost of meals in camp car if a cook had been available would have been \$8.64, or \$7.41 less than he actually paid for them in restaurants. He was allowed this \$7.41.

Rule 40 of the Agreement between the Brotherhood of Maintenance of Way Employees and the Boston and Maine Railroad provides:

"Employees taken away from their homes or headquarters to work elsewhere except in the exercise of their seniority rights, and required to remain over night, will be paid their actual reasonable expenses for meals and lodging unless provided by the Railroad."

This is the only rule in the book which could be found applicable to the Field case.

It should be noted that it provides they will be paid their reasonable expenses, and the question then comes down to what is reasonable. It is admitted that if a cook had been available in the boarding car Field would have paid \$8.64 for his meals on the car, therefore, his cost of living would have amounted to at least that much. Since no cook was available, he had to pay \$7.41 more or \$16.05 in all, and it is the position of the Management that the reasonable expense occasioned by his having to eat away from boarding car was the amount over and above what it would have cost him to eat if a cook had been available, or \$7.41.

There is no other rule in the book under which the expense account submitted by Field would have to be paid. There is nothing in the rules that says that a man with headquarters in a boarding car will be paid any outside expense. There is nothing in the rules that covers this case exactly but the Railroad is willing to allow any additional expense to which the man was subjected due to the inability to secure a cook for the camp car. This amount has been allowed and paid, and it is submitted that it is all the man is justly entitled to under any rule or other arrangement.

OPINION OF BOARD: Between September 17 and 30, 1943, Claimant, an electric welder and member of a traveling boarding car crew, expended \$16.05 at restaurants for meals while working away from home, because no cook was available at the camp car. The Carrier reimbursed the Claimant to the

extent of \$7.41, representing the difference in the cost of his meals at restaurants and what these would have been had he been able to procure them at the car, and the Carrier refused to pay the balance of \$8.64.

Rule 33-A provides that, "Camp cars will be considered headquarters for crews living therein;" and Rule 40 that, "Employees taken away from home or headquarters to work elsewhere, * * * and required to remain overnight, will be paid their actual reasonable expenses for meals and lodging unless provided by the Railroad."

Carrier contends that it is not liable because (a) Claimant was not taken away from his headquarters to work elsewhere; and (b) because it paid the Claimant \$7.41, thereby reducing his expense for meals to exactly what these would have been had there been a cook at the camp car. We cannot sustain either of these contentions. This Claimant was in the same situation, insofar as meals were concerned, as if he had been sent away from home to work at some point where there was no camp car whatever. Under the circumstances last suggested, the Carrier's contractual obligation would be clear. That would be to pay the actual reasonable amount expended by the employee for meals. There being no contention that Claimant's expenditures were not actual or that the same were not reasonable, the claim must be sustained for \$8.64.

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 parties waived oral hearing thereon;

That the carrier and the employees involved in this dispute are respectively carrier and employees 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 Carrier violated the Agreement.

AWARD

Claim sustained, to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1945.