

Award No. 3310
Docket No. SG-3175

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood for employes of Western Regional Telegraph and Signal Gang "B" for reimbursement of meal expenses incurred September 1 up to and including breakfast September 7, 1943, account absence from duty of regularly assigned cook in this gang's camp car outfit during the period specified. Specifically the monetary claims are as follows:

H. H. Janes	10 meals	\$7.00
C. C. Suddarth	7 "	5.95
R. Hurt	10 "	7.50
C. O. Craig	11 "	7.92
D. H. Snyder	10 "	7.00
F. W. Behr	10 "	8.10
J. P. Jones	10 "	7.50
F. W. Knight	8 "	6.40
L. M. Nance	11 "	8.36
R. L. Shanklin	10 "	8.50
A. W. Hedburg	8 "	5.60
W. R. Smith	11 "	9.35
W. S. Hatfield	11 "	9.35

Total — \$98.58

EMPLOYEES' STATEMENT OF FACTS: From September 1 until and including breakfast on the morning of September 7, 1943, the cook regularly assigned to prepare meals for the employes in the Western Region Gang "B" did not report for duty. It was arranged for Mr. F. W. Knight, a regularly assigned signalman in Gang "B", to do the cooking in the absence of the regular cook but the employes in Gang "B" declined to eat the meals prepared by Knight and arranged to secure and eat their meals elsewhere from September 1 to 7, 1943.

Knight is not a qualified cook and has at no time submitted himself to a physical examination before a competent medical authority to determine his hygienic condition.

Gang "B" at the time of this dispute consisted of twelve men and a foreman and the camp car outfit is continuously occupied by either all or part of the gang.

The Carrier had, on August 16 and 17, 1943, allowed \$48.17 and on August 30 and 31, 1943 allowed \$52.25 for reimbursement to employes of Gang "B"

The Carrier submits that it fully complied with the Agreement when it obtained a substitute cook to take the place of the regularly assigned cook during the latter's absence, and in view of the fact that this substitute cook had previously cooked for the gang without complaint, it must be agreed that he was a qualified and satisfactory substitute. In any event, the Agreement does not require that Telegraph and Signal Department gangs in outfit cars be furnished with food by the Carrier, and there is no basis for the request that the Carrier pay for the cost of their food because they elected to eat meals in a restaurant which they could have had in the camp cars.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION: The Carrier has established that under the applicable Agreement the Claimants are not entitled to the amounts claimed herein.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same. Oral hearing is desired.

OPINION OF BOARD: The claim here is for the cost of meals. Article 8, section 2(d), provides:

"The railroad will pay wages of cooks***. When small gangs are employed (not exceeding 5 men) and it is not necessary to furnish cooks one of the employees covered by this Agreement shall be permitted to prepare meals***at the expense of the company."

The factual situation here is that the Carrier furnished a cook to this gang. Occasionally the cook was absent. It appears to have been the practice, when the cook was absent temporarily, to have one of the men do the cooking. That was done on the days involved in this claim, as it was done on five separate other occasions during the year, and when the same signalman, F. W. Knight, was used as cook.

The use of Mr. Knight appears to have been had without objection by the men until the days involved in this claim. It appears that the members of the gang then protested "the cooking" of Mr. Knight, and advised the foreman that they were going to eat out until a regular cook was obtained. Strangely enough, Mr. Knight is shown to have joined with the others in protesting his own cooking. The employees, claiming the cost of the meals eaten

out, now assert that Knight was not a competent cook and had not submitted to examination as to his "hygienic condition".

There obviously is no merit to the "hygienic condition" contention. Mr. Knight was living with these men in the camp cars. It was not claimed then or now that he had any disease or physical condition that rendered objectionable his services as a cook. Nor is there any merit in the contention that a signalman cannot act as a cook. The rule specifically approves it in gangs of five or less. Cooking for five or more would not change the qualifications possessed by a signalman to act as a cook.

Obviously the rule does not require more than that a qualified cook be furnished. That means one qualified by reasonable standards and not the exacting tastes of the particular men he serves.

Here Mr. Knight had, on several occasions served these men as a cook and without protest. That would seem prima facie to establish his qualifications as a cook, even to the satisfaction of these particular men. No lack of qualifications is shown nor is any basis shown for the objections to Mr. Knight's cooking on this occasion. Just why the men objected on this occasion is not shown. The employees have not shown a violation of the rule. The Carrier has shown a good faith compliance. We see no merit in the claim.

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 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 Claimant has not shown a violation of the rule. The Carrier has shown a good faith compliance.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1946.