

Award No. 4480

Docket No. SG-4413

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim that the Carrier improperly applies Rule 76 of the Signalmen's Agreement when it declines to pay all necessary expenses to Signal Maintainer G. W. King while away from his assigned home point.

(b) Claim that G. W. King be reimbursed for all necessary expenses he accrued while away from his regularly assigned home point at De Quincy, Louisiana, since August 1, 1946.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing effective date of June 1, 1944. We understand a copy of this agreement is on file with this Board, and it is, by reference, made a part of the record in this dispute.

The claimant, Signal Maintainer King, is a monthly salaried employee whose salary is computed in accordance with the provisions of Rule 76.

He was awarded this position by virtue of his seniority by an awarding bulletin issued by the Carrier under date of November 2, 1945.

The position is a permanent one within the meaning and intent of the Signalmen's Agreement, with daily assigned hours from 8:00 A. M. to 12 noon and 1:00 P. M. to 5:00 P. M. His territory extends from M. P. 718, north of De Quincy, to M. P. 743.3 (signal 7431 included), south of De Quincy, with an assigned home point at De Quincy, Louisiana.

Prior to and since August 1, 1946, the claimant has submitted expense accounts covering all necessary expenses accrued by him while away from his home point at DeQuincy in the performance of the duties required of his position as Signal Maintainer in C. T. C. territory.

Commencing with August 1, 1946, the claimant observed that the Carrier had made certain deductions in payments for expenses claimed, and upon inquiry he learned that the Carrier had decided to discontinue any reimbursements for noon-day meals claimed by the claimant when away from his home point, which had been allowed him prior to August 1, 1946, and since he acquired the position on November 2, 1945.

Subsequent to the Carrier's adverse action with respect to allowance for noon-day meal expense to the claimant, the Carrier proposed a so-called interpretation to the fourth paragraph of Rule 76, in the form of the following letter:

Rule 76 refers to two classes of employees:

- (1) An employee assigned to the maintenance of a section who **does not** return to home station daily; and
- (2) Employees regularly assigned to perform road work.

That part of Rule 76 regarding expenses while away from home point applies only to these two classes of employees; and if it had been intended that it should also apply to employees assigned to the maintenance of a section who **do** return to home station daily (which is King's status) there would be no differentiation—as there now is—in Rule 76 between an employee assigned to the maintenance of a section who does not return to his home station daily and an employee assigned to the maintenance of a section who does return to his home station.

King's territory is so small that there is no good reason why he cannot carry a lunch from home; in other words, since he is not required to be very far from DeQuincy, and returns home every night (except one or two nights per month), his situation is no different when he is out on his short territory at lunch time than it is when he is at DeQuincy at lunch time; and certainly Rule 76 was not intended to provide lunch expense to King as claimed by organization.

As will be seen by the correspondence contained in Exhibit A, attached hereto, and made a part hereof, we attempted to get together with organization on a joint statement of facts and make a joint submission of the matter to the Board without the necessity of oral presentation. However, the organization insisted on including in the proposed joint statement of facts conclusional and prejudicial argument and of course this precluded a joint submission.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a monthly salaried signal maintainer with regularly assigned hours. His territory extends from M. P. 718 to M. P. 743.3 with De Quincy, Louisiana, assigned as his home point. Claimant contends that he is entitled to reimbursement for noon-day meals when working away from his home point. The Carrier contends that such reimbursement does not apply to employees who normally return to their home point each day.

The applicable rule states in part:

"An employee assigned to the maintenance of a section who does not return to home station daily, and employees regularly assigned to perform road work may be paid on a monthly basis. Such employees shall be paid not less than the minimum hourly rate established for the corresponding class of employees coming under the provisions of this schedule on the basis of 365 eight-hour days per calendar year. The monthly salary is arrived at by dividing the total earnings of 2,920 hours by 12. No overtime is allowed for time worked in excess of eight (8) hours per day; on the other hand, no time is to be deducted unless the employee lays off of his own accord or because of sickness or accident. In case of sickness, full time shall be allowed for a period of not to exceed ten (10) days in any calendar year and half time shall be allowed beyond such ten-day limit for a period not to exceed sixty (60) days in any calendar year.

* * * *

While away from home point, employees will be paid necessary expenses."

Rule 76, paragraphs 1 and 4, Current Agreement.

The language of paragraph 4 of this rule is plain, definite and unequivocal. It is not subject to construction. It means, just as it says, that while away from home point, employees assigned under Rule 76 will be paid necessary expenses. The cost of a noon meal is a necessary expense. There is nothing in the rule from which it can be inferred that it applies only to employees when they do not return to their home point on the day the expense is contracted.

That Claimant is assigned under Rule 76 does not appear to be in dispute. He is a monthly salaried employee. The Carrier admits that he does not return to his home station on an average of two nights a month. The admission is sufficient to bring him within the wording of the rule. We think paragraph 4 of this rule means that any employee assigned under Rule 76 will be paid necessary expenses while away from his home point whether or not he returns home each day. In addition thereto, the Carrier has attempted to negotiate a new rule containing appropriate language to bring about the meaning for which it now contends, indicating that the import of the rule was known to it. No agreement has been reached. This Board has no power to mediate agreements. Its authority is limited to the interpretation of agreements already made. An affirmative award is in order.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute 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

The Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1949.