

Award No. 4542
Docket No. MW-4475

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Machine Operator W. G. Hancock be reimbursed for expenses incurred by him while performing service for the Carrier at Bushland, Panhandle Division, during the period September 16-September 22, 1945, both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: At the time this dispute arose, W. G. Hancock was a Machine Operator with home station at Polo, Missouri. On or about September 16, 1945, he was assigned by direction of the Carrier to work at Bushland, Texas, with the Extra Gang.

Meals and lodging for Hancock were not provided by the railroad during the period he worked at Bushland. Such period was from September 16 to September 22, 1945, inclusive. No camp cars were maintained at Bushland during this referred to period.

During this period, Mr. Hancock incurred necessary expenses for meals and lodging to the amount of \$24.40.

Agreement dated May 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in the Employes Statement of Facts, W. G. Hancock was a machine operator with home station at Polo, Missouri. On or about September 16, 1945 he was assigned to work at Bushland, Texas with the Extra Gang. This assignment lasted about seven days.

Rule 34 (c) of the effective agreement states as follows:

(c) TRAVEL AND WAITING TIME.

"Employes, except as provided by Sections (a) and (b), who are required by the direction of the management to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at the pro-rata rate.

If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time

It will be noted that Rule 34 (c) provides—"Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed." Mr. Hancock was provided with lodging which he declined to use. He likewise could have obtained his meals, but he declined to avail himself of the boarding opportunities of the carrier at Bushland. We contend that the requirements of Rule 34 (c) have been met by the carrier and that inasmuch as the Claimant did not choose to avail himself of the carrier's offer, the claim is not sustainable.

(Exhibit not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood makes this claim in behalf of W. G. Hancock, a machine operator, and asks that he be reimbursed for expenses incurred while performing service at Bushland, Texas.

Claimant, a machine operator stationed at Polo, Missouri, was assigned to work with an Extra Gang at or near Bushland, Texas, and did so during the period for which this claim is made, which is September 16 to September 22, 1945, inclusive. During this period claimant lodged and ate most of his meals at Amarillo, Texas, and makes claim therefor as follows: Lodging \$12.00 and meals \$12.40.

Rule 34 (c) of the parties' agreement, effective May 1, 1938, provides, when employees are required to leave their home station, as follows:

"Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed."

Carrier contends, because of the agreed to interpretation applicable to section (c), that it applies only to emergency situations. This interpretation is as follows:

"Section (c) is intended to cover employees who may in an emergency be called out to perform work on or off their regular assigned territory and held away from their home or regular boarding or outfit cars. This would apply particularly to men called out to washouts, burnouts, wrecks, and emergency repair work on stock yards, coal chutes, water stations, bridges, etc."

We do not think this interpretation so limits the application of Rule 34 (c) but, as stated in Award 486 of this Division where the same question was raised, " * * * in its proper application this interpretation is not intended to exclude all other conditions that might arise in connection with the work of the Carrier, but would apply particularly, not exclusively, to the classes of work specified."

The quoted provision of Rule 34 (c) provides that the Carrier will provide meals and lodgings to employees coming within its provisions and if not provided will pay the actual and necessary expenses thereof.

The record discloses that Carrier provided claimant with lodging or living accommodations in its bunk house at Bushland but that claimant failed to take advantage thereof during this period. Under this situation the claim for lodging is not properly made for Carrier fully complied with the rule. The record further shows that Carrier provided claimant with a place to eat his meals in the kitchen car at Bushland. Whether or not there would have been a charge for these meals is not too clear but apparently there would have. If made, such charge would have been the actual necessary expense thereof.

We find the claim for lodging to be without merit and therefore denied. As to the claim for meals, since Carrier offered to provide them in its kitchen car at Bushland, the claim therefor is without merit unless the Carrier would have made a charge therefor. If any charge would have been made therefor then such would be the actual necessary expense for meals during this period. We therefore allow the claim for meals during this period but only to the extent the Carrier would have charged claimant therefor had he eaten the

meals in the kitchen car where they were provided for him by the Carrier. We return the claim to the property for the determination of that fact.

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier may have violated the Agreement.

AWARD

Claim denied as to lodging but sustained as to meals in the amount, if any, which Carrier would have charged therefor if claimant had eaten them in the kitchen car of the Carrier. If no charge would have been made for these meals, had claimant eaten them in the kitchen car, then the claim for meals to be denied. Claim is therefore returned to the property for a determination of the facts relating to what charge, if any, Carrier would have made for meals if claimant had eaten them in its kitchen car and for the disposition of this claim accordingly.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 12th day of September, 1949.