

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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:

(1) That the Carrier violated the agreement by not allowing expenses incurred for meals by Oiler T. L. McManamon while he was assigned to outfit Car Number X916077 which was not equipped with facilities for the preparing of meals, from March 10 to July 5, 1947;

(2) That Oiler T. E. McManamon be reimbursed for the expenses referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On March 10, 1947, Oiler T. E. McManamon was assigned to work with Shovel #35. This Shovel #35 was operated by Shovel Operator Scheytt when McManamon was assigned as Oiler on March 10. Scheytt continued as operator until April 9, 1947. Beginning April 14, 1947, Shovel Operator Bassett took over the operation of Shovel #35.

Operator Bassett was provided with a separate bunk car which was equipped with a cook stove and the rest of the necessary facilities for preparing meals. He brought his wife with him and she prepared meals in Bassett's car.

McManamon obtained his meals from the Bassetts and paid Bassett for the cost of them. During this entire period from March 10 to July 5, 1947, McManamon was provided with Bunk Car No. X916077 which was not equipped with facilities for the preparation of meals.

On July 5, 1947 following the protest of Oiler McManamon that his bunk car was not properly equipped to prepare meals, the Carrier furnished a cook stove. From that day on Bunk Car X916077 had the following equipment: one bed, one table, two chairs, an icebox and a sink, plus the cook stove. Beginning on that date Oiler McManamon prepared his own meals in his own bunk car and discontinued sending in any claim for expenses.

The Committee has contended that McManamon should have been allowed his expenses for meals during the entire period from March 10 to July 5, 1947 because of the Carrier's failure to properly equip his bunk car in order to allow him to prepare his own meals. The Carrier has denied the Committee's claim.

this man was properly equipped or not. There would seem to be no similarity to the instant case.

While the Committee also refers to Award 2510 resulting from a case arising on Milwaukee Lines West, the Carrier feels that rather than supporting the position of the Organization in the instant case, that Award supports the position of the Carrier. In the case resulting in Award 2510, a B&B crew consisting of a foreman and eight men was furnished camp cars but no facilities whatever for preparing meals. In that case the claim terminated when one kitchen-dining car was furnished for the crew of nine men. No contention was made that individual kitchen facilities were required to be furnished to each of the nine members of the crew.

In the instant case there is no contention but that at least one car fully equipped with kitchen facilities was furnished the two-man crew of which McManamon was a member.

The claim for expenses submitted by Oiler McManamon is not supported by any rule, custom, or practice, and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On March 10, 1947, Claimant was assigned to work with gas-powered Shovel No. 35. This shovel was operated by Shovel Operator Scheytt until April 9, 1947. On April 14, 1947, Shovel Operator Bassett operated the machine. One bunk car equipped for the preparation of meals was provided. A second bunk car not so equipped until July 5, 1947, was provided for Claimant. The evidence shows that from March 10 to April 13, neither the Operator or Claimant made use of the cooking facilities furnished. Beginning April 14 and continuing through July 5, Shovel Operator Bassett occupied the bunk car containing the cooking facilities along with his wife. Claimant boarded with the Operator and paid for his meals. Claimant contends that he is entitled to reimbursement for meals from March 10, 1947, to July 5, 1947, under the rules of the applicable Agreement.

The rules applicable to the situation before us are:

"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."

It is clearly the intention of Rule 27 that the Carrier will not pay the cost of meals unless the employee is away from his headquarters or outfit to which he is assigned. Rule 33 contemplates the providing of boarding facilities by the Carrier when employees are assigned to outfits requiring housing and boarding facilities away from headquarters. It is plain that when such facilities are furnished that expenses for meals will not be paid.

In the instant case, such facilities were furnished the Claimant from March 10, 1947, to April 13, 1947, and the fact that he made no use of them will not support a claim. From April 14, 1947, to July 5, 1947, however, cooking facilities were not available to Claimant. The Shovel Operator, his superior, occupied the one bunk car equipped with cooking facilities. Such facilities were not thereafter available to Claimant except on the Operator's terms. This is not a compliance with the Agreement. The language of Award 3041 is controlling wherein it is said: "This Claimant was in the same situation, in so far 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 employe for meals."

It is clearly the intent of Rule 33 that the facilities therein described will not only be furnished and maintained, but they will be available to the employe for use. This was not done in the present case from April 14, 1947 to July 5, 1947, and the claim for expenses will be sustained for that period.

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 Employe involved in this dispute are respectively carrier and employe 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 Agreement was violated.

AWARD

Claim sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.