

Award No. 6916
Docket No. MW-6830

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) The Carrier violated the agreement when it failed to provide a cook for the Bridge and Building gang in charge of Bridge and Building Foreman C. Struckman, from September 2, 1952 to September 16, 1952, both dates inclusive and failed and refused to make reimbursement for the expenses incurred in securing meals elsewhere:

(2) Reimbursement for expenses incurred in securing meals during the period referred to in part (1) of this claim be made as follows:

Ernest Hoepfner	\$31.50	L. J. Rodgers	\$29.90
C. Richmond	30.75	E. G. Ehredt	26.55
F. E. Rodgers	30.40	Geo. Johnston	25.31

EMPLOYES' STATEMENT OF FACTS: Cooks are provided by and at the Carrier's expense to employes assigned to road crews and for which camp cars are furnished for the employes' use as their home and headquarters while on the road.

The Bridge and Building crew assigned to the Illinois Division and in charge of Bridge and Building Foreman C. Struckman, was, as is customary, furnished with camp cars and a camp cook.

Beginning on September 2, 1952, the cook assigned to Bridge and Building Foreman Struckman started her annual vacation, but no relief cook was provided, nor were the claimant employes permitted to use the cook car to prepare their own meals. Consequently, the claimants were compelled to secure their meals elsewhere, and expended the respective amounts shown in part (2) of the Statement of Claim.

The claimants continued to purchase their meals at the nearest available restaurant until September 16, 1952. After breakfast had been purchased at a restaurant on September 16, 1952, one member of the crew was thereafter assigned to cook for the gang during the absence of the cook.

"The Railroad will furnish an adequate supply of water suitable for domestic uses to employes living in its buildings, camps and outfit cars. Where it must be transported and stored, the receptacle shall be adapted to the purpose. Present practice with respect to furnishing Company ice will be continued."

Water and ice supply was furnished in accordance with the above rule.

The above quoted rules are the only rules contained in the current agreement which have any bearing on this dispute. The Carrier has shown that under the terms of the applicable agreement claimants are not entitled to the amounts claimed herein.

(Exhibits not reproduced.)

OPINION OF BOARD: Complaint is made that from September 2 to September 16, 1952, Claimants were required to eat in restaurants at locations nearby their outfit cars, account of Carrier's failure to assign and have a cook on duty.

When Claimants sought reimbursement for necessary expenses incurred in obtaining meals away from their outfit cars, claims were disallowed and the Division Engineer, who first passed on the claims, assigned as reason for disallowing same that the fault was the foreman's who failed to replace a cook during a temporary absence. From this point on the parties seem to have forgotten what the real dispute was about and turn their attention to charges, counter-charges, and denunciations that leave the record in hopeless conflict on material facts.

The rules are fairly clear. It would have aided, in their interpretation, to have known the true facts surrounding this dispute, but the parties having failed to give us facts with which we can work, claims must stand or fall without aid of the usual tests applied in such matters.

The rules are not framed in language that puts the Carrier under a continuing duty to assign camp cooks at all times and under any and all circumstances to Bridge and Building gangs which are assigned to camp cars. When cooks are assigned and while used, they must be (1) from the ranks of Maintenance of Way forces, (2) be paid under these rules and (3) be used according to the Carrier's Agreement with the petitioning Organization.

It is significant to note, however, that Rule 37 leaves it entirely to the judgment, and, therefore, in the broad discretion of the Management when kitchen and dining cars will be furnished. It hardly stands to reason that the Carrier is under any greater duty to furnish a cook than it is to furnish the necessary kitchen and dining cars, and we must hold that it is not bound by any firm and fixed obligation to do either under the applicable rules, unless by established practice or other mutual recognition not here clearly shown, the parties have put some other interpretation on their rules.

We are aware, of course, that in this case proper camp cars, including dining and a kitchen car, were furnished and for a time a cook was on duty. However, the need for a cook is one which the Carrier is permitted by the rules to determine at any time according to circumstances then existing and, here, if in its judgment it was not necessary to replace a cook for the entire period of a temporary absence, the Board would be usurping powers and authority left vested in the Carrier by the contracting parties to say, on the basis of the record before us, that claims should be sustained. We shall deny the claims but the denial is confined to the facts of record in this docket.

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 it is not shown that the Carrier violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1955.