

Award No. 11247
Docket No. MW-10718

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement and the established practices thereunder when it failed to provide a cook for District B&B Gang No. 5 on January 14, 1957 and on days subsequent thereto.

(2) B&B Cook Paul J. Moorman be allowed pay at the cook's rate for each day that District B&B Gang No. 5 was worked without a cook since January 14, 1957.

EMPLOYES' STATEMENT OF FACTS: Traditionally, in accordance with the Agreement rules and established practices thereunder, cooks have been provided by and at the Carrier's expense for employees assigned to Bridge and Building gangs which are moved from point to point over a seniority district in accordance with the requirements of service.

On January 14, 1957 the Carrier established and placed in service District B&B Gang No. 5, consisting of one (1) Foreman, two (2) Mechanics, one (1) Helper and one (1) Apprentice, to work at various locations over its Eastern Lines in accordance with the requirements of service.

The violation of the Agreement and of the established practices thereunder was protested and the instant claim filed in behalf of the claimant.

The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated August 1, 1947, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 3 of Article II, insofar as it is pertinent hereto, reads as follows:

to prepare meals for four-men gangs; therefore, the claimant here before the board had no contract right to be employed in B&B gang No. 5. He therefore has no contract right to the pay he demanded.

Neither Maintenance of Way Agreement here in evidence has been violated as alleged. Furthermore, established practices under the agreement fully support the Carrier's action. There is no basis for the monetary demand here made by the Brotherhood.

CONCLUSION

Carrier respectfully submits that:

(a) The effective Maintenance of Way Agreements here in evidence were not violated as alleged, nor was Carrier's action contrary to the established practice under such agreements.

(b) Carrier has not contracted with employes or their representatives to employ cooks in small B&B gangs and the claimant has no contract right to employment in such gang as cook.

(c) Claim being without any basis and unsupported by the agreements in evidence, the Board is left with no alternative except to make a denial award.

All evidence here presented in support of Carrier's position is known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make reply thereto and present such additional evidence as necessary to protect its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employes and The Southern Railway Company.

The issue in this case is the same as Docket No. MW-10717, Award No. 11246. The decision turns on whether there is an established practice on the property.

It is impossible to determine the practice from the evidence furnished us. The parties have offered evidence to a contrary practice.

We do not believe, generally speaking that cases should be remanded. However, under the specific facts and circumstances that attend this dispute, we remand it to the property for further handling and return here if the parties are unable to agree.

If a substantially consistent and well established practice is found to exist, the claim should be disposed in accordance with the practice. Otherwise, the claim should be denied.

This opinion is restricted to the particular facts and circumstances attending this case.

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.

AWARD

Claim remanded to the property for disposition in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.