

Award No. 11248
Docket No. MW-10719

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 Foreman C. C. Heavner's B&B gang on February 18, 1957 and on days subsequent thereto.

(2) Furloughed cook T. Dortch be allowed eight hours' straight time pay at the cook's rate for each day Foreman Heavner's B&B gang was worked without a cook on and subsequent to February 18, 1957.

EMPLOYEES' STATEMENT OF FACTS: In accordance with the Agreement rules and the established practices thereunder, cooks have traditionally been provided by and at the Carrier's expense for employes assigned to Bridge and Building gangs headquartered in outfit cars or highway trailers from point to point over a seniority district.

Prior to February 18, 1957 the Claimant, Mr. T. Dortch was regularly assigned to the position of cook on Foreman Heavner's B&B Gang. This B&B Gang was assigned to work at various locations on its seniority district.

On February 18, 1957 the position of cook on the above referred to B&B Gang was abolished.

The Agreement violation was protested and the claim as set forth herein was filed in behalf of the claimant.

The claim was handled in the usual manner on the property and declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, 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:

(d) Claimant Dortch has no contract right to be employed as cook and therefore has no contract right to the monetary payment here demanded.

Claim being unsupported by the agreement, the Board, being limited to interpreting the agreement, is left with no alternative except make a denial award.

All evidence here submitted 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 present any additional evidence necessary for the protection of 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 in 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 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.

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.