

Award No. 11249
Docket No. MW-10720

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
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 B&B Gang No. 8 on August 5, 1957 and on days subsequent thereto, and, as a consequence thereof,

(2) - (a) Furloughed Cook Jesse Munday be allowed eight hours' straight time pay at the cooks' rate for each day B&B Gang No. 8 was worked without a cook on and since August 5, 1957.

(2) - (b) B&B Mechanic C. Muse and B&B Apprentice R. L. Reed each be allowed four hours' pay at their respective straight-time rates for each day beginning with August 5, 1957 on which no cook was assigned to B&B Gang No. 8 and thereby causing Messrs. Muse and Reed to perform Cook's duties in addition to their own full time regular duties.

EMPLOYEES' STATEMENT OF FACTS: The positions of B&B Mechanics and Apprentices are embraced within the scope of the Agreement commonly referred to as the "Foreman's Agreement", whereas the positions of Cook in B&B Gangs are embraced within the scope of the Agreement commonly referred to as the "Laborers Agreement."

In accordance with the Agreement rules and the established practice thereunder, Cooks have traditionally been provided by and at the Carrier's expense for employes assigned to Bridge and Building Gangs headquartered in outfit or trailer cars which are moved from point to point over a seniority district.

B&B Mechanic Muse, Apprentice R. L. Reed and Cook Jesse Munday were regularly assigned to their respective positions on B&B Gang No. 8. This B&B Gang was regularly assigned to work at various locations over its seniority district.

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employes and The Cincinnati, New Orleans & Texas Pacific Railway Company.

The issue in this case is the same as Docket No. MW-10717, Award No. 11246. The decisions 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.