Award No. 11971
Docket No. SG-12406

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

> That Signalman R. F. Danley be reimbursed $75.50, the amount of personal expenses he incurred while working away from his assigned headquarters during November 1959. [Carrier's File: VB-S 225-18-21]

EMPLOYES' STATEMENT OF FACTS: Prior to the time this dispute arose, Mr. R. F. Danley was regularly assigned to a Signalman position in Signal Gang No. 11, with headquarters in Camp Cars. He was used away from his home station (Camp Cars) and required to perform temporary relief work at Chester, Illinois, from November 9, 1959, until November 30, 1959, inclusive.

Inasmuch as Signalman Danley was sent from his home station (Camp Cars) and did not return each day, he was entitled to actual expenses for meals and lodging while away from his regularly assigned headquarters.

Signalman Danley subsequently submitted a claim for expenses on the blank form provided by the Carrier for that purpose, claiming a total of $75.50 for meals and lodging for the period from November 9 to 30, 1959, inclusive. The expenses claimed are as follows:

Date	Breakfast	Dinner	Supper	Lodging	Total
9		$1.05	$1.35	$2.50	$4.90
10	$ .85	.95	1.15	2.50	5.45
11	.85	1.05	1.35	2.50	5.75
12	.85	1.05	1.10	2.50	5.50
13	.85	.95			1.80
16		1.05	1.35	2.50	4.90

involved in the instant dispute, that Board would have rendered a denial award.

It is the position of the Carrier that the rules of the agreement here involved applicable to the reimbursement of expenses to employes are founded upon the principle that the Carrier is obligated only to reimburse employes for actual necessary expenses incurred while traveling on authorized company business away from their headquarters point, home station, home or place of residence as the case may be. It is our position that to sustain this claim is to say that expenses as contemplated by the rules of this agreement do not need to be "real," or "necessary" or "actual" or "incurred" but that they can be imaginary, fictitious and artificial. It is to say that an employer has an obligation to contribute to an employe's normal living expenses while he is residing in his own home. It is to say that Carrier's first prerogative to demand that an expense must be a real and actual thing would be removed. It would place the Board's approval upon a procedure the purpose of which would be to exact payments from the Carrier when monies were not actually expended to the unjust enrichment of the claimant. It would constitute changing the language of the agreement without the consent of the parties thereto, which of course this Board is without authority to do.

Carrier respectfully requests that this claim be dismissed as it has not been properly presented to this Board; but without prejudice to that position in any eventuality it should be denied as it is totally lacking in merit or agreement support.

(Exhibits not reproduced.)

OPINION OF BOARD: Two questions are raised by this appeal.

1. Has the employee exhausted his remedies on the property, and

2. Is an employe whose headquarters is distant from his family home entitled to expense money when an assignment takes him from his headquarters to his home town?

The record here reveals that no conference was requested by either party on the property. Under the facts of this case we hold that this omission prevents us from taking jurisdiction at this time. We are of the opinion that under the facts of this case it was incumbent on the parties to sit down in conference and negotiate in good faith for a settlement. We do not decide whether the failure of the Carrier to ask for a conference operates as an estoppel to raise this jurisdictional question or whether its silence can be considered a tacit admission that the exchange of correspondence between the parties was sufficient to meet the conference requirements of Section 2 Second of the Railway Labor Act. We hold only that under the facts of this case a sit down conference is required before we can assume jurisdiction.

Because of our ruling on the jurisdiction question we do not reach the merits raised by the second question.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary.

Dated at Chicago, Illinois, this 13th day of December 1963.

LABOR MEMBERS' DISSENT TO AWARD NO. 11971, DOCKET NO. SG-12406

Award 11971 is palpably wrong and does nothing but add confusion and inconsistency to the awards of this Board.

Without prejudice to our position that "sit down conferences" are not required by the Railway Labor Act, the circumstances in this case are clearly within the findings in Award No. 10030, in which we held:

> "* * * there had been at about the same time a final conference with the Carrier involving an identical claim which was denied. It is impossible to see what coule further have been gained by an additional conference concerning an identical claim and the law has never required a party to do a futile thing."

Also, see Awards 10424 and 10567, among many others.

For the above reasons, I dissent.

/s/ W. W. Altus

W. W. Altus
Labor Member