

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Wabash Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 23, when it failed and/or refused to reimburse Signalman T. L. Polley for actual expenses incurred by him while away from his home station on August 26, 27, 28, 29, September 2 and 3, 1958.

(b) The Carrier should now be required to reimburse Signalman T. L. Polley for the following expenses, incurred on the dates shown:

Date	Place	Breakfast	Dinner	Lodging
August 26, 1958	Decatur, Ill.	\$1.00	\$1.85	\$2.00
August 27, 1958	Decatur, Ill.	.95	1.85	2.00
August 28, 1958	Decatur, Ill.	.90	1.90	2.00
August 29, 1958	Decatur, Ill.	.95	1.85	
September 2, 1958	Decatur, Ill.	.95	1.80	2.00
September 3, 1958	Decatur, Ill.	.90	1.75	2.00

[Carrier's File: 116.2]

EMPLOYEES' STATEMENT OF FACTS: Prior to August 25, 1958, Mr. T. L. Polley had been assigned to a Signalman position in Gang S-6-T. That job was abolished, so he exercised his seniority by displacing on a Signalman position in Gang C-2, then stationed at Landers, Illinois.

After Mr. Polley reported for work on Gang C-2 on Monday, August 25, 1958, he received telephone instructions from the office of Mr. L. B. Yarbrough, Superintendent Signals and Communications, to report for work at the Signal Shop, Decatur, Illinois, on Tuesday, August 26, 1958. He filled a temporary Signalman position in the Decatur Signal Shop from August 26 to September 3, 1958.

Rule 23 of the signalmen's agreement provides that the carrier will allow "actual expenses" for meals and lodging when employees are away from home station if such is not provided by the railroad. The term "actual expenses" has but one meaning—that being expenditures actually incurred by the employees for meals and lodging by reason of their being required to be away from their home station by direction of the carrier.

The carrier contends that Mr. Polley's claim for \$2.00 lodging expenses on each of the five claim dates is not a claim for reimbursement for any monies which Mr. Polley was required to expend; that he has not provided any evidence that he paid \$2.00 to his parents for each of the five claim dates for lodging at their home; and, therefore, that such claim does not fall within the category of "actual expenses" as set forth in Rule 23 of the signalmen's agreement. In that regard, it is apropos to point out that the burden rests upon the petitioner to establish facts sufficient to support its claim.

Attention is directed to the fact that there is no rule in the signalmen's agreement granting employees the price of lodging when such lodging is given them free of charge, but, on the contrary, that Rule 23 of that agreement specifically requires that allowances will be made for lodging expense only when such expense is "actual" (out-of-pocket expenditure) which, in effect, reimburses them for monies they expend for meals and lodging when they are away from their home station.

The carrier affirmatively states that with the exception of Mr. Polley being paid \$16.65 for breakfast and dinner expenses on the dates in question, of which fact the Committee is obviously unaware, that the substance of all matters referred to herein has been made the subject of correspondence or discussion in conference between representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. On August 25, 1958, Claimant was instructed to fill a temporary position of Signaller at the Decatur, Illinois, Signal Shop, starting on August 26, 1958. While filling this temporary assignment, Claimant was advised that his regular position at Landers, Illinois, was abolished and he was assigned to a regular Signaller's position in Decatur beginning September 4, 1958. Claimant filled the temporary vacancy at Decatur from August 26 to September 3, 1958.

Claimant first submitted an expense account for the month of August for breakfast, lunch and dinner for August 26, 27, 28 and 29, 1958. For the month of September, Claimant submitted another expense account for breakfast, lunch and dinner for September 2 and 3. Carrier paid the lunch expenses for the August and September dates, but refused to pay the breakfast and dinner expenses, because it was Carrier's belief that Claimant resided in Decatur and was not entitled to such expenses under Rule 23 of the Agreement. This rule says:

"Rule 23. Hourly rated employees sent from home station and who do not return to home station on the same day will be allowed time for traveling or waiting in accordance with Rule 24. All hours worked will be paid for, straight time for straight time hours, and overtime rate for overtime hours. Actual expenses will be allowed when away from home station if meals and lodging are not provided by the railroad."

On October 10, 1958, Carrier received Supplemental Expense Forms 253 requesting the same breakfast and dinner expenses for the August and Sep-

tember dates, and in addition thereto, requested allowance of lodging expenses for August 26, 27, 28 and September 2 and 3 at the rate of \$2.00 a day.

At the conference between the representatives of the parties on June 5, 1959, it developed that Claimant did not maintain a residence in Decatur and that the address he gave to Carrier was the residence of his parents. It is admitted that Claimant resided with his parents on the days involved.

Carrier paid the breakfast and dinner expenses. The only item in dispute is \$10.00 for lodging expenses.

Rule 23 provides for reimbursement of "actual" expenses. This means that Claimant is entitled to be reimbursed only for out of pocket expenses paid for his food and lodging. In Award 10923 (Hall), which involved a similar rule, we said that: "'Actual' means just what it says—true, real or genuine, it does not mean what the employe thinks he is entitled to—he is entitled, only, to the actual cost of meals wherever they have been eaten." The mere fact that Claimant slept at his father's home, does not per se disqualify the Claimant from collecting lodging expense under Rule 23. He must, however, show that the \$10.00 claimed was actually paid to his father for such lodging. It must have been \$10.00 out of his pocket.

The record does not show that Carrier requested nor that Claimant did submit receipts or proof of out of pocket expense for the meals paid by Carrier. Under normal conditions we would be inclined to hold that the Carrier had also waived proof of out of pocket expense for lodging. The fact remains, however, that the claim for lodging expense was filed later than the claim for meal expense even though the expense for both occurred concurrently for the same days. For this reason there is a question whether Claimant actually paid for his lodging. There is nothing in the record that Carrier asked for proof nor did Claimant submit verification for actual lodging expense. We are unable to determine whether the claim for lodging was an "actual expense" under Rule 23.

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 has jurisdiction over the dispute involved herein.

AWARD

The claim is remanded to the property and Claimant shall submit proof that the \$10.00 lodging claim was for "actual expense" paid by him at or about the time the expense account was first submitted to the Carrier.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.