

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed and refused to reimburse Audigage Operator M. E. Mann and Helper R. J. Heck for the cost of meals expenses incurred while away from their headquarters during the periods from October 1 through October 30, 1958 and from November 3 through November 6, 1958.

(2) Audigage Operator M. E. Mann and Helper R. J. Heck each be reimbursed in the amount of seventy seven dollars and sixty-five cents (\$77.65) because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During the months of October and November of 1958, the claimants, who have established and hold seniority as section laborers on the IM&D Division but who were in furloughed status, were selected recalled to service and used by the Carrier to operate an Audigage in the performance of rail testing work on the territory comprehended in the IM&D Division.

While away from their headquarters (Division Point), each claimant incurred meals expenses in the amount of sixty three dollars and seventy-five cents (\$63.75) during the period from October 1 through October 30, 1958 and thirteen dollars and ninety cents (\$13.90) during the period, from November 3 through November 6, 1958.

Although each claimant submitted an itemized statement of expenses incurred on Form 132 to the Carrier for each month, the Carrier has refused to reimburse the claimants for the cost of meals expenses incurred.

The Carrier has declined the claim.

In addition, the Board will note that the Agreement of May 7, 1954, in item 5, did not provide that audigage operators will be reimbursed for cost of meals and lodging incurred while away "from their section headquarters" but provides for such payment while "away from their headquarters." As outlined previously in this submission, while the claimants had a caboose furnished them for lodging and no meal preparation facilities were included, they were allowed additional payment to cover their meal expenses. However, during the period of the instant claim they had a proper outfit as their headquarters. Even if the aforementioned item 5 of the mentioned Agreement of May 7, 1954 required that payment of expenses be made while away from "section headquarters", as the General Chairman would now want the Agreement to read, the claimants would not qualify for the payment claimed because they had no section headquarters from which they were called for the service as soni-rail operators. They were furloughed section laborers; as such they could be recalled for service on positions or vacancies not only on any one section but for service on the entire seniority District No. 20, consisting of a number of sections. They would have headquarters at whatever point they were assigned to work. In this instance, they were assigned to work on a soni-rail operator position, and their headquarters would necessarily be that of the position; i.e., the outfit car from which they started service each day assigned to work.

The claimants' designated assembling point was their outfit car, at which they started service each day, and thus was necessarily their headquarters while on these positions.

In recognition of all factors involved, it is clearly evident that the claimants not only had headquarters at the location of their outfit car, were compensated for payment of expense of meals during the period they did not have an outfit car containing facilities prescribed by schedule rules, and after proper outfit car was furnished, they were not entitled to any expense payment. Also, under no circumstances did they have a headquarters other than the outfit car as they were furloughed employees before they were called for the soni-rail service. The claim is entirely without merit, and the Carrier respectfully requests that the claim be denied.

OPINION OF BOARD: Contention in this matter arose out of the refusal of the Carrier to reimburse Audigage Operator M. E. Mann and Helper R. J. Heck for cost of meals incurred during periods of employment while these two formerly furloughed employees were living in a Carrier supplied outfit car.

Claim was made this violated Rule 5 of the agreement dated May 7, 1954 which reads: "Audigage Operators will be reimbursed for cost of meals and lodging incurred while away from their headquarters in accordance with the provisions of Rule 28." Rule 28 provides: "Employees will be reimbursed for cost of meals and lodging incurred while away from headquarters or outfits by direction of the Management whether off or on their assigned territory . . ."

The fulcrum point of this matter is the question as to what constitutes headquarters, the division point Austin, Minnesota as urged by the Claimant or the outfit car as urged by the Carrier.

A most careful review has been made of the many persuasive authorities urged by the Claimant and Carrier and the unique circumstances of this case i.e. furloughed Employees assigned to a transient job. It is the finding:

1. Headquarters in this case was Austin, Minnesota Conform Award 5488.
2. Claimants are entitled to reimbursement for the cost of their meals.

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; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12186 DOCKET MW-11727 (Referee Reagan)

The majority committed error in finding that the headquarters was Austin, Minnesota.

Award 5488 was not based on the same rule, nor fact situation, as the present case and is of no precedential value without regard to the fact that it too was in error. In that dispute a clerk was temporarily relieving a regularly assigned employe under a rule which failed to mention outfit cars, nor were outfit cars furnished as in the instant dispute.

A furloughed employe hasn't any headquarters until recalled to duty, whereupon his headquarters is the point where assigned. The fact a furloughed employe mails his name and address to the division office is immaterial insofar as having any bearing on establishing a headquarters point under the applicable rules here.

In Award 1446 we held that the outfit cars and the towns in which they were located were claimants' headquarters. Also, see Award 2862.

Award 11916 (Engelstein) between these same parties found that the employees' headquarters is the outfit car to which regularly assigned. In this dispute, claimants were regularly assigned as audigage operator and helper and could not be displaced pursuant to paragraph 2 of the Memorandum of Agreement, dated May 7, 1954. Their headquarters was the outfit car.

For these and other reasons we dissent.

W. M. Roberts
G. L. Naylor
R. A. DeRossett
R. E. Black
W. F. Euker