

Award No. 12737
Docket No. SG-11390

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(a) The Southern Pacific Company violated the Signalmen's Agreement dated April 1, 1947 (reprinted August 1, 1950, including revisions), particularly Rules 2, 65 and 70.

(b) Signal Foreman Paul T. Long be reimbursed \$14.00 to cover cost of noon day meals purchased by him during the month of February, 1958. [Carrier's file: SIG-46-45 S- 2-2-102]

EMPLOYEES' STATEMENT OF FACTS: Mr. Paul T. Long had been regularly assigned to a position of Signal Foreman, with headquarters in outfit cars. Rule 2 of the Signalmen's Agreement provides that a Signal Foreman will be paid actual necessary expenses when service requirements make the purchase of meals and/or lodging necessary at other than home station. The Carrier furnishes a blank form (PERSONAL EXPENSE ACCOUNT, Form No. C.S. 148) which employees submit at the end of each month, listing their personal expenses incurred during the month.

During February, 1958, the outfit cars to which Mr. Long had been assigned were stationed at Lordsburg, New Mexico. For that month, Mr. Long submitted a personal expense account totaling \$20.00, which was based on a daily expenditure of \$1.00 for each noon-day meal he purchased while away from his home station during that month. On March 3, 1958, Mr. R. C. Nagel, Signal Supervisor, returned to Mr. Long this original expense account for February, 1958, and advised that the Carrier would not reimburse him for the expenses claimed for that month.

Under date of March 5, 1958, Signal Foreman Long wrote the following letter to Signal Supervisor Nagel:

"Your letter File No. 233 of March 3rd, and the Original of my Personal Expense Account form 148 submitted for February received today.

The within claim is purely an attempt on the part of petitioner to re-write Rule 2 to provide for a meal allowance to a foreman in spite of the fact that the service requirements did not make it necessary for him to eat away from his home station.

On the dates of this claim there was no valid reason why claimant could not have returned to his outfit car for lunch. Apparently the only reason for his failure to return to his outfit for lunch was his personal desire to eat at a lunch counter in the vicinity. In those circumstances, there is no basis whatever for the claim.

After this claim had been denied by Carrier's Assistant Manager of Personnel, the General Chairman, for the first time, injected into the case an erroneous contention that claimant was precluded from using his truck on the dates involved by instructions of his supervisor. The letter dated October 3, 1958, wherein Carrier's Assistant Manager of Personnel refuted this erroneous allegation and explained the circumstances under which a foreman is actually precluded from returning to his outfit car for lunch due to the requirements of the service, is reproduced as Carrier's Exhibit C.

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is for reimbursement of the cost of certain lunches purchased by Claimant during the month of February, 1958, while employed as a Signal Foreman in charge of a repair and construction gang at Lordsburg Yard, New Mexico. The gang was housed in outfit cars stationed within the yard. The sites where the work was performed were located at varying distances from the outfit cars. A truck was available for transporting the employees from the work sites to the outfit cars and return. Thirty minutes was allowed for lunch.

Petitioner contends that on dates of claim it was not possible for Claimant to have gone from the work site to the outfit cars for lunch and returned, within the allotted thirty minutes.

The Carrier first moves the Board to dismiss the claim on grounds that Petitioner has raised certain issues before the Board which were not introduced on the property, citing Section 3, First, (i) of the Railway Labor Act, and our decisions to the effect that the Board may not properly assume jurisdiction of a claim which presents issues not theretofore dealt with by the parties. (Award 5469 is typical.) It argues that before reaching the Board the claim was advanced by Petitioner on two premises only, first, that Claimant could not have returned from the work sites without jeopardizing his safety; and, second, that he could not have reached the outfit, consumed his lunch, and returned to work within the allotted time. It argues that at no time during the progress of the claim on the property did the Petitioner raise questions relating to conditions at the work site, Carrier's computation of the distances involved, or highway construction and traffic congestion interfering with transportation by means of the truck. The record does not support this contention. The distance factor and the use of the truck were both raised by the Local Chairman in his letter of May 11, 1958, to the Signal Supervisor, who, in turn, replied in detail on May 14, asserting that by use of the truck Claimant could have driven to his outfit car "in not over five or six minutes." These matters continued to be discussed in subsequent

correspondence and conferences between the parties. Moreover, the question of conditions at the work site was asked by the General Chairman in a letter dated September 11, 1958, to the Carrier's Assistant Manager of Personnel. Petitioner's argument emphasizing the delay incident to Claimant's driving to and from the work site because of road construction and traffic difficulties was no more than an answer in defense to the Carrier's assertion that it would have taken not more than five or six minutes to have done so by using the truck. This was no "new" issue, as alleged by the Carrier. In view of the foregoing, the Board declines to dismiss this claim on the grounds urged by the Carrier. The motion is denied.

It does appear from the record that Petitioner has failed to present any evidence of probative value to controvert the Carrier's version of the facts as to the distance and time factors here involved. This it must do to prove its case, because, in our opinion, Petitioner has the burden of showing that the requirements of the service in which Claimant was engaged were such as to make his purchases of noon meals "necessary" under Rule 2 of the Agreement. Those purchases would not have been necessary if he could have returned to the outfit cars for lunch within the time allowed. Thus, Petitioner's primary task was to present evidence that the factual situation at Lordsburg made it physically impossible for Claimant to have done so. This it attempted to do by assertions and argument. But nowhere in this record is there any evidence to rebut Carrier's estimates of the mileage involved and the time required to drive from the work sites to the outfit cars. Except for repeated assertions that Claimant could not have done so within the 30-minute meal period, Petitioner has given the Board no figures — not even an estimate — of how long it would have taken or what the actual distance was.

In view of the foregoing, the Board has no alternative but to find that Petitioner has failed to meet the burden of proof required to support this claim. It will, therefore, be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1964.