

Award No. 13750
Docket No. MW-13912

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MONON RAILROAD

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

(1) The Carrier is and has been in violation of the Agreement since its failure and refusal to allow noon day meal expenses to Truck Drivers Clarence Yost, George Wilson, W. E. York and J. W. Wortman.

(2) Each of the aforementioned employes and/or their successors be reimbursed for the noon day meal expenses each incurred since the beginning date of the violation and continuing until the violation has been corrected.

EMPLOYEES' STATEMENT OF FACTS: The claimants submitted expense sheets for the month of January 1962 in the usual and customary manner. The Carrier allowed only the expenses claimed by Truck Driver George Wilson (who was on vacation for a ten day period in January) and returned the expense sheets of the other claimants with instructions that they reduce the amounts claimed by eliminating the noon meal expenses therefrom.

Inasmuch as the expenses were actually incurred and validly reimbursable, the claimants did not reduce the amounts claimed, but requested their authorized and duly designated representative to handle for correction. The General Chairman met with the Carrier's Chief Engineer and its Director of Personnel, on March 6, 1962 but was never favored with a decision from either Carrier officer. Consequently, since reimbursement for noon day meal expenses were being disallowed for each of the four truck drivers and, not only for the month of January, 1962, but for each subsequent month thereafter, the instant claims were timely and properly presented and thereafter timely and properly handled on appeal in the usual and customary manner, the Carrier declining to allow the claim at all levels of handling.

The Agreement in effect between the two parties to this dispute dated December 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statment of Facts.

The employees here in question are members of a gang permanently assigned to a terminal point.

It is Organization's claim that should these employees be away from the actual headquarters' point at time of the mid-day meal, then the Carrier should reimburse them for the cost of the meal even though they might be only a few rail lengths or a short distance away. Such an absurd interpretation could mean each gang would have to be returned to their headquarters' point for the meal, even though they had their lunch with them and were at some distant point on their section or territory. Since these employees who live at home and are not assigned to boarding cars have historically carried their lunch with them on their motor car or in their truck, they eat at wherever they may be working at that time.

No claim is made that these employees were away from home for a period of time, such as overnight or a few days. They were not. They merely went out from their headquarters point to perform their work and were not returned to the actual headquarters' point to eat the noon meal. This is the reason for the wording in the rule, i.e. — "This rule not to apply to mid-day lunch customarily carried by employees." The very rule upon which the Employees base their claim, specifically bars the claim.

Carrier submits, therefore, that no Rule of the Agreement has been violated and that the applicable Rule upon which the claim is based definitely bars the claim.

Carrier requests this claim be denied in its entirety.

OPINION OF BOARD: The Claimants are regularly assigned to a track gang at an assigned headquarters and additionally act as Truck Drivers for the gang. They tell us that prior to January, 1962 they were reimbursed for noon day meal expenses but since that date Carrier has refused to grant that expense on their regularly submitted expense accounts. Petitioner seeks reimbursement for them for all days involved until Carrier corrects the alleged violation.

It is not disputed that Claimants depart from, and return to, their regular assigned headquarters at the beginning and end of their regular shift.

The crux of the claim lies in whether the mid-day lunches of Truck Drivers in situations such as have been described above fall within or without the exception to Rule 38(a), which is:

" . . . This rule not to apply to mid-day lunch customarily carried by employees, nor to . . . "

The Carrier states that the customary practice on its property has been for Truck Drivers, in situations such as have been described, to carry their mid-day lunch the same as the rest of the gang. Petitioner objects to Carrier using this defense by alleging that it was not presented and discussed by the parties on the property and is, therefore, a procedurally defective defense. We believe that Petitioner has overlooked the full meaning of the two letters which Carrier sent to the General Chairman. These two letters are quoted in full in Petitioner's second filing in this record at pages 1 and 2. We will overrule the procedural objection.

Except for the statements of Claimants, which must be classed as inconclusive and self-serving, we are presented with no probative proof upon which to make a finding that the agreement has been violated, therefore, we must deny the claims.

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 Carrier has not violated the Agreement.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1965.