Award No. 14117
Docket No. MW-14412

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it refused to reimburse Welder Helper Victor M. Baird for expenses incurrred on March 23, 30 and April 6, 1962 for Friday evening meals. (Carrier's files 30-20-78 and 30-20-79.)

The Carrier be required to reimburse Claimant Baird for the expense incurred for the aforesaid three meals ($4.70).

EMPLOYES' STATEMENT OF FACTS: The claimant is a regularly assigned Welder Helper. During March and April, 1962, he was working in the vicinity of Frankfort and Veedersburg, Indiana. He was assigned to headquarters consisting of a camp car for which a cook was not furnished. He ate his meals at restaurants of his choice in whichever town was most accessible and convenient to his camp car or work location.

The claimant's residence was located in Cayuga, Indiana.

The claimant submitted expense accounts for the months of March and April, 1962, in the amounts of $68.20 and $44.65, respectively. Said expense accounts represented his actual necessary expenditure for meals during said months. Despite the existence of an Agreement rule which provides for the allowance of such meal expenses, the Carrier refused to reimburse the claimant for the cost of meals taken on Friday evenings of March 23, 30 and April 6, 1962. The Carrier has not refused to reimburse the claimant for the cost of other meals obtained during the months of March and April 1962, but has expressly admitted its obligation to reimburse the claimant for said other meals. However, reimbursement for said other meals has been withheld (not refused or disallowed) because the claimant refused to revise his expense accounts as suggested in the following quoted excerpts from various letters of decision.

OPINION OF BOARD: In this claim we are concerned with the portion of Rule 56 of the agreement which reads:

> ". . . When camp cars are occupied by five or more men living in the cars, cook or employe to cook will be provided; if not provided, employes will be allowed actual necessary expenses for meals."

The facts in this case are not in dispute. During March and April, 1962, Claimant was assigned to headquarters consisting of a camp car for which a cook was not provided. When the Claimant submitted his expense accounts for March and April the Carrier refused to pay for Friday evening meals on March 23, 30 and April 6, 1962. The Carrier does not deny that the expenses were incurred but denies that they were necessary. Carrier agreed to authorize payment of the expense account if these charges for Friday evening meals were deleted.

The Carrier states that the Claimant was off duty at 3:30 P. M. and could have arrived at his home, less than 25 miles away, in not more than 45 minutes.

We feel that the Employes have established a prima facie case since there is no denial by the Carrier that the expenses were incurred. The burden then must be on the Carrier to show that the Friday evening meal expenses were not necessary.

The Carrier has attempted, in this case, to alter Rule 56 by making a denial of expenses based on mileage from home and the time a normal person eats the evening meal. We do not believe you can expect a man who goes to work early and gets off work at 3:30 P. M. to eat at the same time as a man on a 9 to 5 shift. Neither do we believe that the Carrier can make a denial because of the distance to the Claimants home. If the Carrier intended to consider mileage they should have sought to include it in Rule 56 at the bargaining table.

We feel that Carrier has failed to meet the burden of showing that these Friday evening meal expenses were not necessary. Award 13834 (Wolf) states:

> "We do not think that the Board should support every decision of management merely because it was an exercise of managerial judgment. When managerial judgment is challenged, it is the obligation of management to supply the evidence by which this Board can decide if that judgment was proper. Carrier simply has not met that burden in this case."

The claim is sustained and Claimant should be paid for evening meals on March 23, 30 and April 6, 1962.

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 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; and

That the Agreement has been violated as indicated in the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1966.