

Award No. 14574
Docket No. MW-15145

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
(System Lines)**

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

- (1) The Carrier violated the agreement and practices thereunder when
 - (a) it assigned Machine Operator Milton H. Harold to operate Tie Bed Scarifier R-24 beginning with July 22, 1963 but failed to make lodging available to him in his "own outfit" and failed to provide or make available facilities for preparing meals. (Carrier's Case No. MW-143)
 - (b) it assigned Machine Operator Ross S. Brown to operate Dual Tie Saw R-26 beginning with August 21, 1963 but failed to provide or make lodging available to him in his "own outfit" and failed to provide or make available facilities for preparing meals. (Carrier's Case MW-144)
- (2)
 - (a) Machine Operator Milton H. Harold be reimbursed for the expenses incurred for meals and/or lodging beginning with July 22, 1963 and continuing until the violation referred to in Part 1(a) of this claim is discontinued.
 - (b) Machine Operator Ross S. Brown be reimbursed for the expenses incurred for meals and/or lodging beginning with August 21, 1963 and continuing until the violation referred to in Part 1(b) of this claim is discontinued.

EMPLOYEES' STATEMENT OF FACTS: A Fairmont W87 Tie Bed Scarifier, designated as R-24, and a Kershaw Dual Tie Saw, designated as R-26, were placed in Group 3 of the Carrier's machine operation department by letters reading:

"ALL CONCERNED:

A permanent vacancy exists in the position of operator on Tie Bed Scarifier R-24. Rate of pay: \$2.5528 per hour.

Living quarters are provided in outfit car assigned to Track Gang. Applicants for this position should have experience in operating this type of equipment.

When submitting your bid, state your qualifications.

Bids for the above position will be considered if received in this office in writing on or before 5:00 P.M., Thursday, July 18, 1963. (Vacated by W. W. Howell)"

He was assigned as operator of Tie Bed Scarifier R-24 effective July 23, 1963 and fulfilled that assignment until November 26, 1963 when the machine was destroyed in a train derailment. During that entire period claimant and his machine R-24 were assigned to Track Gang No. 3. Eating and lodging facilities were made available to claimant in the regular outfits assigned to this Track Gang No. 3; and claimant used those facilities for the entire period of the claim.

CLAIM NO. 2

Claimant Ross S. Brown was the successful bidder on Maintenance of Way Department Bulletin No. 43, dated July 29, 1963, reading:

"ALL CONCERNED:

A permanent vacancy exists in the position of Operator on Dual Tie Saw R-26. Rate of pay: \$2.5528 per hour.

Living quarters are provided in outfit car. Applicants for this position should have experience in operating this type of equipment.

When submitting your bid, state your qualifications.

Bids for the above position will be considered if received in this office in writing on or before 5:00 P.M., Monday, August 12, 1963. (New Position)"

He was assigned as operator of Dual Tie Saw R-26 effective August 21 and fulfilled that assignment until November 26, 1963 when the machine was destroyed in a train derailment.

During that entire period claimant and his machine R-26 were assigned to Track Gang No. 3. Eating and lodging facilities were made available to claimant in the regular outfits assigned to this Track Gang No. 3; and claimant used those facilities during the entire period of this claim.

OPINION OF BOARD: In this case, Claim No. 1 involves Milton H. Harold, who was assigned as Operator of Tie Bed Scarifier R-24, effective July 23, 1963 and who fulfilled that assignment until November 26, 1963

when the machine was destroyed in a train derailment. Claimant and his machine were assigned to Track Gang 3. The record indicates that he used the eating and lodging facilities made available to him in the regular outfits assigned to Track Gang 3, during the entire period of this claim.

Claim No. 2 involves Ross S. Brown, assigned as Operator of Dual Tie Saw R-26, effective August 21, 1963 and who fulfilled said assignment until November 26, 1963 when the machine was destroyed in a train derailment. Claimant and his machine were assigned to Track Gang 3 during this time. The record also indicates that eating and lodging facilities were used by Claimant in the regular outfits assigned to Track Gang 3 during the entire period of this claim.

The employees rely in this case on Rule 38 (b), which is as follows:

“(b) The services of operators of machines shown in the Machine Operation Department under Article XV necessitate their assignment to work at various points or with various crews, and they will not be reimbursed for lodging and meals when lodging is available and facilities are provided for preparing meals with their own outfit or such facilities are available in regular outfits. Operators availing themselves of boarding accommodations with regular outfits will pay rates charged employees attached to such outfits.”

In the instant case, our Claimants were assigned to Track Gang 3 during the period covered by the claim. They took advantage of the lodging and meal facilities which were available in the regular outfits. The rates which they were charged appear to be the same as those charged other employees attached to the outfit.

The language in question in this case appears to be that part of Rule 38(b) which says, “and they will not be reimbursed for lodging and meals when lodging is available and facilities are provided for preparing meals with their own outfit or such facilities are available in regular outfits.” The Organization contends that each of the individual outfit cars must be equipped with proper facilities for lodging and with facilities that permit the operator to prepare his own meals.

We are of the opinion that the language in Rule 38(b) does not require the Carrier to provide facilities to permit the operator to prepare his own meals in each of the individual outfit cars. The record indicates that the Carrier has, in fact, provided individual outfit cars where they have been available, to machine operators. However, it is the position of the Carrier that they have an alternative method of making meal and lodging facilities available in the regular outfits assigned to the gang. We are inclined to accept the Carrier's interpretation of this rule.

We are of the opinion that the rule involved is clear and that its interpretation in this case would require that the claim be denied, insofar as both the Claimants and the Carrier have abided by what we consider to be the clear intent of the language involved in this rule.

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 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 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 22nd day of June 1966.