



Award Number 17845

Docket Number SG-18213

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railway Company for three dollars (\$3.00) per day expense allowance under the provisions of the Award of Arbitration Board No. 298, dated September 30, 1967, on behalf of R. L. Beach, William H. Baldridge, Larry D. English, G. S. Blair, Jr., Edward Verley, Ronald R. Goodwin, Melvin D. Grant, D. B. Swan, Milton Milan, Richard B. Foster, R. N. Parker, D. E. Willis, B. R. Courtney, David J. Lowery, Michael W. Norris, assigned to the signal gang or otherwise assigned to a type of service covered by Section I of the Award of Arbitration Board No. 298, commencing October 15, 1967, and continuing for each man for each and every day thereafter he is assigned in such service until the matter is settled. [Carrier's File: 018-294.7]

EMPLOYEES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this is a claim for an expense allowance which we consider is due under provisions of the Award of Arbitration Board No. 298, dated September 30, 1967.

On May 10, 1966, this Organization and several other railway labor organizations served notice on most of the nation's railroads for an increase in wages and other benefits, including travel time and expenses for employees required to work away from home during their work week, such as in camps, camp cars, highway trailers, hotels or motels. In an agreement dated January 13, 1967, the parties increased wages and improved vacation benefits. They also agreed that the request for travel time and expenses would be the subject of direct negotiations which were to begin on or about June 1, 1967, and that if direct negotiations did not settle the issue, either party could invoke mediation, with the understanding that if the issue is not disposed of in mediation, it would be submitted to binding arbitration under the arbitration provisions of the Railway Labor Act.

The travel time and expense issue eventually went to binding arbitration in accordance with the provisions of an Arbitration Agreement dated July 19, 1967, which provided, among other things, that the award of the Arbitration Board shall become effective on October 15, 1967 and shall continue in force until changed in accordance with the procedures of the Railway Labor Act, as amended. The Arbitration Board was designated as No. 298; its award is attached hereto as Brotherhood's Exhibit No. 1.

During conference at the time the award was executed, the Board arrived at interpretations which are attached hereto as Brotherhood's Exhibit No. 2. At the same time, the Neutral Members of the Board issued a statement which

On November 11, 1968, Carrier made its submission to the reconvened Arbitration Board No. 298 in connection with Question No. 26. In its submission Carrier pointed out that no claims had been submitted by or on behalf of the Employees for a \$4.00 lodging allowance, that there was no dispute between the parties in regard to lodging, and the only dispute involved the \$3.00 meal allowance claims.

On January 10, 1969, the Organization wrote the Carrier as follows:

"Mr. D. E. Farrar
Vice President--Personnel
Kansas City Southern Railway Co.
114 West Eleventh Street
Kansas City, Missouri 64105

"Dear Sir:

"Referring to claims of certain employees of the signal department for 'Away From Expenses', as provided for by the Award of Arbitration Board No. 298, for the period October 15, 1967 to September 30, 1968.

"Arbitration Board No. 298 has been requested to re-convene, possibly it has already done so, for the purpose of answering a number of questions which have arisen out of the application of the provisions of the Award.

"In view of the fact that one of the questions submitted to the Board involves the claims, or the basis for them, made by the KCS signal department employees I am hereby requesting a ninety (90) day extension of the time limits in which to proceed with further handling of these claims.

Possibly, by the time such extension of the time limits would expire the Board will have answered these questions which could serve to resolve these claims without further handling, to the Third Division.

"Please advise at your very earliest convenience.

"Yours truly,
/s/ L. A. GANDY
"General Chairman."

Since the Organization had elected to choose Arbitration Board No. 298 as the tribunal to adjudicate the meal allowance claims and that Board had not rendered its decision, Carrier in letter dated January 16, 1969, declined to extend the time limit. Actually there was no necessity for extending the time limit, because the Organization on January 14, 1969, advised the Executive Secretary of the Third Division of intention to file an ex parte submission covering the instant case.

(Exhibits not reproduced)

OPINION OF BOARD: Arbitration Board No. 298 was constituted and established pursuant to an agreement between several labor organizations, including the Petitioner herein, and the National Railway Labor Conference representing the Carriers, including the one in this case. A number of issues were submitted to final and binding arbitration. Among these was a request for travel time and expense. On September 30, 1967 that Arbitration Board adopted an award which, among other things, contains the following:

"I. The railroad company shall provide for employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels as follows:

"A. Lodging

1. . .
2. . .
3. . .

"B. Meals

1. If the railroad company provides cooking and eating facilities and pays the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$1.00 per day.
2. If the railroad company provides cooking and eating facilities but does not furnish and pay the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$2.00 per day.
3. If the employees are required to obtain their meals in restaurants or commissaries, each employee shall be paid a meal allowance of \$3.00 per day.
4. . ."

Article V of that award also provides the following:

"V. Insofar as there are presently agreements in effect between any of the carriers and organizations party to this arbitration which agreements include provisions dealing with the types of employee benefits provided for in Sections I, II, and III, and the subparagraphs thereof in this award, the organizations party to such existing agreements shall have the option of accepting any or all of the benefits provided in this award or of continuing in effect any or all of the provisions of the existing agreement in lieu thereof. Such election must be exercised on or before December 31, 1967. There shall be no duplication of benefits."

The effective date of the options was declared to be October 15, 1967. By agreement of the partisan members of that board, the time to exercise the options under Section V of the award was extended to and including February 1, 1968.

A dispute now exists whether the Petitioner exercised valid options under Article V of the award and whether an implementing agreement is required to effectuate the meal allowance provisions in I-B of that award.

Section 14 of the Arbitration Agreement states:

"Any difference arising as to the meaning, or the application of the provisions of such award shall be referred for a ruling to the Board, or to a subcommittee of the Board agreed to by the parties hereto; and such rulings, when certified under the hands of at least a majority of the members of such Board, or if a subcommittee is agreed upon, at least a majority of the members of the subcommittee, and when filed in the Clerk's office of the United States District Court for the Northern District of Illinois, Eastern Division, shall be a part of and shall have the same force and effect as such original award."

An examination of the correspondence submitted by both parties does not clearly and unequivocally establish that the Petitioner properly exercised the options within the meaning and intent of Article V of the award. In the absence of any agreement, this Board would proceed to interpret the meaning and intent of said Article V. But where an agreement between the parties exists providing for the adjudication of differences by a Disputes Committee or an Arbitration Board, this Board loses jurisdiction. Section 14 of the Arbitration Agreement gives Arbitration Board No. 298 or a subcommittee of that Board exclusive jurisdiction to rule on "any difference arising as to the meaning or the application of the provisions of such award."

There is no provision for an implementing agreement in the award of Arbitration Board No. 298 nor is there one in the Arbitration Agreement. If Arbitration Board No. 298 or its subcommittee rules on the option issue alone, this Board could thereafter adjudicate the issue of an implementing agreement and upon the merits of the claims. Until that is done, this Board has no jurisdiction. The parties are obliged to submit the option issue to the Arbitration Board established in their agreement.

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 the National Railroad Adjustment Board is without jurisdiction to determine the claim.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1970.