

 Award No. 18520
Docket No. MW-18941

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it paid J. E. Seidel a meal allowance of two (2) dollars per day instead of three (3) dollars per day for the period extending from October 15 through October 31, 1967 and from January 1 through February 29, 1968. (System File 400-8/2753)

(2) J. E. Seidel be allowed an additional one (1) dollar for each day within the period extending from October 15 through October 31, 1967 and from January 1 through February 29, 1968 because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant was assigned to the position of extra gang foreman on Extra Gang No. 591 from October 31, 1967 and to the position of machine operator on Extra Gang No. 587 from January 1 through February 29, 1968. During these periods, he was not provided with cooking and eating facilities and, therefore, he was required to obtain and eat his meals elsewhere. Therefore, he was entitled to a three dollar (\$3.00) per day meal allowance in accordance with Article I of Agreement DP-404 which, insofar as it is pertinent hereto, reads:

"ARTICLE 1 — TRAVEL TIME AND EXPENSES OF EMPLOYEES IN CAMP, TRAILER OR OUTFIT CARS

Section 1. The 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:

* * * * *

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.

Under date of December 2, 1969, General Chairman C. L. Uptergrove appealed to the undersigned highest officer of the Carrier designated to receive claims. (Carrier's Exhibit "A," Sheets 7 and 8.)

The instant alleged claim was declined by the undersigned on December 5, 1969. (Carrier's Exhibit "A," Sheet 9.)

This matter was discussed in conference by the parties involved herein on December 18, 1969.

Copies of all correspondence covering the handling of this alleged claim on the property are attached hereto as Carriers Exhibit "A," Sheets 1 through 16.

Memorandum of Agreement No. DP-404 between the Missouri-Kansas-Texas Railroad Company and the Brotherhood of Maintenance of Way Employees dated March 22, 1968, resulting from the Award of Arbitration Board No. 298 and the Employees' exercise of options pursuant to Section V thereof, is attached hereto as Carrier's Exhibit "B," Sheets 1 through 4.

Claimant J. E. Seidel's Forms 2323-A, covering expense claims for October, November and December 1967 and January, February 1968, at attached as Carrier's Exhibit "C," Sheets 1 through 5.

Carrier's Exhibit "D" attached hereto covers the following materials pertinent to the instant dispute:

Sheets 1 and 2 — Letter Agreement dated January 16, 1969.

Sheet 3 — Interpretation No. 51 of Arbitration Board No. 298.

Sheets 4, 5, 6, 7 — Interpretation No. 12 of Arbitration Board No. 298.

Sheets 8 - 12 — Correspondence covering conference and agreement reached therein for processing pending claims under Arbitration Board Award No. 298.

Carrier's Exhibit "E," Sheets 1 through 11, covers Carrier's Original Submission before Arbitration Board No. 298, Question No. 44, which resulted in Interpretation No. 51.

Agreement No. DP-357, effective February 1, 1928, with Revisions to September 15, 1961, between the Missouri-Kansas-Texas Railroad Company and Employees Represented by the Brotherhood of Maintenance of Way Employees is on file with the Third Division, National Railroad Adjustment Board.

Exhibits not reproduced.

OPINION OF BOARD: The record clearly discloses that, on April 18, 1969, the Manager of Personnel and the General Chairman agreed that, on all pending claims for benefits under Section I of Award of Arbitration Board 298, it would not be necessary for the Carrier to check to see whether or not the employees had been furnished trailers — in order to expendite the processing of these claims — the Carrier would simply allow the \$2.00 per day meal expense for days the men qualified for such expense prior to but not subsequent to April 18, 1969.

The record further discloses that the instant claim was pending on April 18, 1969, and that, in accordance with said agreement, Claimant has been allowed \$2.00 per day meal expense for the days he qualified for such expense. Since the parties reached an adjustment of this dispute on the property, the claim here is moot and must be dismissed.

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.

AWARD

Claim dismissed.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.