Award No. 18522
Docket No. SG-18960

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company that:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 25, when, on dates including April 21 through and including May 1, 1969 employes in Signal Gang No. 3, namely, H. L. McCrimmon, J. D. Comer and E. S. Hartley, were sent away from home station and were not reimbursed for actual necessary expenses for lodging while performing services for Seaboard Coast Line Railroad Company.

(b) Carrier now reimburse H. L. McCrimmon the amount of $16.40 and J. D. Comer and E. S. Hartley each, the amount of $8.40 as underpayment now due.

(Carrier's File: 15-56)

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of July 1, 1967, and a Memorandum of Agreement dated June 17, 1968, which are by reference made a part of the record in this dispute. The pertinent parts of those agreements are:

(July 1, 1967 Agreement)

"RULE 11 — Home Station

An employe's time will begin and end at a designated point in his home station except employes covered by Rules 19 and 46. Camp cars will be the home station as referred to in these rules for employes assigned to camp car outfits. Gang employes will be assigned by bulletin to a designated gang, identified by the foreman's name or gang number.

"RULE 25 — Expenses

Employes sent away from home station or territory will be reimbursed for actual necessary expenses incurred for meals and lodging.

NOTE: Interpretation 12 of the Arbitration Board is attached as Carrier's Exhibit "C."

Vice President to General Chairman, March 4, 1970.

"Confirming discussion with Mr. Dick on Feb. 19th, covering 'Claim on behalf of signal employes in Signal Gang No. 3, H. L. McCrimmon, Foreman, for actual necessary expenses incurred when sent away from home station (camp cars) to Piedmont, Alabama,' Item #2 of your conference listing of February 22nd.

You did not present anything new in support of this claim and you were advised that there was no reason for changing our decision of November 18, 1969."

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants were members of the camp car outfit of Signal Gang No. 3. For the weekend (their regular rest days) of April 18-20, 1969 they were released with instructions to report to a new location on their next regular work day, April 21. Their camp car outfit except their sleeping car which was delayed for repair at an intermediate point, was moved to the new location. The sleeping car did not become available until May 1 and during the interim Claimants procured their own lodging.

At issue is whether the provisions of Sec. I of the Memorandum of Agreement between the parties dated June 17, 1968 is controlling in this circumstance or whether Rule 25 which is preserved in Section II of that Memorandum of Agreement is applicable here.

Sec. I states in pertinent part:

"I. For employes 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 ,the railroad company shall provide:

'A. **Lodging**

"1. If lodging is furnished by the railroad company, such lodging furnished shall include, mattress, pillow, bed linen, blanket, towels soap, washing and toilet facilities. (Note: Exception to this paragraph 1 for camp cars is as specified in Rule 56.)

2. Lodging facilities furnished by the railroad company shall be adequate for the purpose and maintained in a clean, healthful, and sanitary condition.

3. If lodging is not furnished by the railroad company the employes shall be reimbursed for the actual reasonable expense thereof not in excess of $4.00 per day."

Sec. II reads, in part:

"II. With respect to Section II of the Arbitration Award the employes elect to retain provisions of existing rules of the working

agreement. It is understood that Rules 18, 19, and 25, thereof shall continue in effect for employes sent away from home station."
Rules 25 provides:

"RULE 25 — Expenses

Employes sent away from home station or territory will be reimbursed for actual necessary expenses incurred for meals and lodging.

Employes assigned to monthly rated positions will be allowed expenses as outlined above when away from home station if not provided for by the Carrier.

Expenditures of any other kind will not be incurred or reimbused therefore unless his supervisor instructs him to incur the expense. This rules does not intend the payment of noon-day meal for hourly rated maintenance forces when working on their assigned territory."

The Petitioner presents the somewhat disingenuous argument that the Claimants were "sent away from home station or territory" (Rule 25) when their sleeping car was not available and they were obliged to seek other accommodations for a temporary period and thus, are covered by the expense provisions of Rule 25 for the days in question.

The Carrier replies that employes cannot be simultaneously covered as Section I and Section II employes under the June 17, 1968 Agreement. They were clearly employed in "a type of service" which requires them to live away from home as contemplated by Section I and were entitled to reimbursement for the expenses incurred by its express terms.

The Board must conclude from the record that the employes were of a class covered by Section I of the June 17, 1968 Agreement and were properly reimbursed for expenses on the days for which claim is made.

It should be noted that Awards 18496 and 18497 (Referee Devine) approved April 9, 1971 involved disputes between the same parties on the same fact situations. Both Awards held for the Carrier and denied the claims on the same predicate as the Board as concluded in the instant case. No new evidence or arguments have been introduced here to differentiate this case from those which preceded in Awards 18496 and 18497. This Board has been asked to overturn and reverse these prior Awards, which would require substantial and compelling reasons for so doing. The Petitioner has failed to provide any such reasons.

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 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 was not violated.

AWARD

Claim denied.

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.

Dissent to Award 18522, Docket SG-18960

The Majority (Carrier Members and Referee) in Award 18522 has followed its earlier erroneous Awards 18496 and 18497. Doing so has only compounded the error to which we pointed in our dissents to those awards.

Award 18522 is in error, and we dissent.

W. W. Altus, Jr.
Labor Member

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