



Award No. 18596
Docket No. SG-19075

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

Claim No. 1.

(a) The Carrier has violated and continues to violate the May 6, 1968 Agreement when the members of the Signal Gang, Foreman R. E. Waller, headquarters Versailles, Pa., are not being furnished camp cars, dining facilities, lodging or meals and are not being properly compensated in lieu thereof under the aforementioned agreement.

(b) The following named members of this gang, their successors or any persons added thereto, now be allowed payments for lodging and meal allowances provided for in Sections I-A-3, I-B-3, and I-B-4 of the Memorandum of Agreement dated May 6, 1968, for the period commencing 60 days prior to the date * of this letter and to continue so long as the violation exists.

R. E. Waller	residence Scottdale, Pa., 43 miles for Versailles
C. T. Green	residence Connellsville, Pa., 41 miles from Versailles
J. Zurick, Jr.,	residence Dunbar, Pa., 44 miles from Versailles
R. L. Daniels,	residence Uniontown, Pa., 54 miles from Versailles
E. H. Lantz,	residence Confluence, Pa., 68 miles from Versailles.

*Date of 'this letter' was January 20, 1970.

(Carrier's File: 2-SG-35)

Claim No. 2.

(a) The Carrier has violated and continues to violate the May 6, 1968 Agreement when the members of the Signal Gang, Foreman D. R. Smith, headquarters Parma, Ohio, are not being furnished camp cars, dining facilities, lodging or meals and are not being properly compensated in lieu thereof under the aforementioned agreement.

(b) The following named members of this gang, their successors or any persons added thereto, now be allowed payments for lodging and meal allowances provided for in Sections I-A-3, I-B-3, and I-B-4, of the Memorandum of Agreement dated May 6, 1968, for the period commencing Oct. 6, 1969 to Dec. 5, 1969, the date these positions were abolished.

D. R. Smith	ID No. 1404014	residence Massillon, Ohio, 40 miles from Parma
H. M. Smith	ID No. 1104444	residence Bridgeport, Ohio, 140 miles from Parma
D. E. Smith	ID No. 1205037	residence Bridgeport, Ohio, 140 miles from Parma
R. D. Ingold	ID No. 1205383	residence Lorraine, Ohio, 25 miles from Parma
J. E. McBeth	ID No. 1504583	residence New Athens, Ohio, 100 miles from Parma
T. D. Ikey	ID No. 1505906	residence Freeport, Ohio, 70 miles from Parma

(Carrier's File: 2-SG-36)

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Claim No. 3.

(a) The Carrier has violated and continues to violate the May 6, 1968 Agreement when the members of the Signal Gang, Foreman C. A. Reel, Jr., headquarters Defiance, Ohio, are not being furnished camp cars, dining facilities, lodging or meals and are not being properly compensated in lieu thereof under the aforementioned Agreement.

(b) The following named members of this gang, their successors or any persons added thereto, now be allowed payments for lodging and meal allowances provided for in Sections 1-A-3, 1-B-3, and 1-B-4 of the Memorandum of Agreement dated May 6, 1968, for the period commencing 60 days prior to the date * of this letter and to continue so long as the violation exists.

C. A. Reel, Jr.	ID No. 1404554	residence Willard, Ohio 87 miles from Defiance
W. D. Christensen	ID No. 1205366	residence North Baltimore, Ohio 37 miles from Defiance

R. A. Guilford ID No. — — — residence Sherwood, Ohio
10 miles from Defiance

(Carrier's File: 2-SG-37)

(a) The Carrier has violated and continues to violate the May 6, 1968 Agreement when the members of the Signal Gang, Foreman Norman Smith, headquarters Benwood, W. Va., are not being furnished camp cars, dining facilities, lodging or meals and are not being properly compensated in lieu thereof under the aforementioned Agreement.

Norman Smith ID No. 104438 residence Bridgeport, Ohio
12 miles from Benwood, W. Va.

E. K. Dunn ID No. 1205001 residence Washington, Pa.,
35 miles from Benwood, W. Va.

D. E. Smith ID No. 1205037 residence Bridgeport, Ohio
12 miles from Benwood, W. Va.

J. E. McBeth ID No. 1504583 residence Athens, Ohio
25 miles from Benwood, W. Va.

I. D. Ikey ID No. 1505906 residence Freeport, Ohio
38 miles from Benwood, W. Va.

J. J. Scaffidi ID No. 1503120 residence Bellaire, Ohio
5 miles from Benwood, W. Va.

(Carrier's File: 2-SG-38)

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The Carrier's Labor Relations Department declined the four claims in the instant case by letters which are Carrier's Exhibits 2, 3, 4, and 5.

The history and development of the matter having been set forth, the Carrier will not proceed to outline and discuss its position in this case.

(Exhibits not reproduced.)

OPINION OF BOARD: Following the Award of Arbitration Board No. 298 the parties met and completed an Agreement which is printed as Appendix "E" of their Agreement. The disputes here involve, as an initial question, the determination of whether the character of service of the employees for whom the claims have been made is such that they are covered by Section 1 of Appendix E, or Section 2 of that Agreement.

Carrier has argued that they are covered by Section 2 of the Appendix and that in consequence Rule 41 (e) applies to them, unchanged by either Appendix E or reference to the Arbitration Award of Board No. 298. The Award of Board No. 298 permitted the Organization, at its election, to retain rules covering the subject matter of the Award in lieu of the Award. The Award covered employees in three categories of service. They are as follows:

- I ". . . 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 . . ."
- II "Employees (other than those referred to in Section I above and other than dining car employees) who are required in the course of their employment to be away from their headquarters point as designated by the carrier, including employees filling relief assignments or performing extra or temporary service . . ."
- III ". . . dining car employees . . ."

In considering whether the employees here are in Section I or Section 2 service, Interpretation No .12 must be considered and is reproduced below.

"INTERPRETATION NO. 12 (Question No. 1: BRS and UP)

QUESTION: Carrier practice over a period of many years has been to provide camp cars for gangs but camp car rules in effect do not make it mandatory that cars be provided. Employees assigned to such gang are recruited from an entire seniority district and work away from home while assigned to the gang. May Carrier discontinue providing camp cars and escape payment under I-A-3?

ANSWER: This question requires a determination as to whether or not the employees involved are to be provided for under Section I of the Award. Section I applies to all 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.'

The 'Opinion of the Neutral Members' issued concurrently with the Award on September 30, 1967, includes the following pertinent language in further defining the employees contemplated as provided for in Section I:

"The employees involved are primarily maintenance of way employees who are engaged in the construction, reconstruction, maintenance, and repair of the roadway, bridges, buildings, and other structures and the signalmen who perform similar services in connection with the signaling devices and systems."

The Memorandum of Board Conference issued by the full Board on September 30, 1967, included the following:

"1. It was decided by the Board that the provisions of Section I shall not apply to employees where the men report for duty at a fixed point, which remains the same point throughout the year."

The Carrier seems to contend that these employees are now subject to Section II of the Award rather than Section I.

With regard to Section II employees the following language from the 'Opinion of the Neutral Members' is pertinent:

"Section II of the award deals primarily with problems arising out of relief service, although not limited thereto. Within the area of relief assignments three general categories are involved and these are: (1) regular assigned employees diverted from their regular assignment to perform relief service; (2) regular assigned relief employees who provide relief on a scheduled basis to fill in on the rest days of regular employees; and (3) extra employees who provide relief on an irregular unscheduled basis as the needs of the service may require."

An employee cannot be transferred from coverage of Section I into Section II merely by the discontinuance of camp cars and/or the designation of a headquarters point.

In applying the foregoing principles and guidelines to the specific question at issue here, it is clear that the employees are in a type of service contemplated within the coverage of Section I. The Carrier may discontinue providing camp cars but may not escape payments under Section I except in locations where the men report for duty at a fixed point which remains the same point throughout a period of 12 months or more.

In resisting these claims Carrier has insisted with vigor that Rule 41(e) controls and was left intact by the Agreement of May 6, 1968 (Appendix E). However, unless the employees making the claims are Section 2 employees under that Agreement we have no occasion to consider what effect, if any, the May 6, 1968 Agreement has upon Rule 41(e).

In reaching a conclusion on this question it is necessary to turn to the Award of Arbitration Board No. 298 and the interpretation of that Award. Although interpretation No. 12 did not deal with an identical factual situation, it did set out guidelines which assist in resolving the question here since it examined the characteristics of service which constitute Section I service under Award No. 298.

By the clear terms of the May 6, 1968 Agreement (Appendix E) the employees filing these claims are entitled to a \$4.00 per day lodging and a \$3.00 per day meal allowance, if they are in Section 1 service.

In Interpretation No. 12 the Board stated the following key points:

1. "... Section I shall not apply to employees where the men report for duty at a fixed point, which remains the same point throughout the year."
2. "Section II of the award deals primarily with problems arising out of relief service . . ."
3. "An employee cannot be transferred from coverage of Section I into Section II merely by discontinuance of camp cars and/or the designation of a headquarters point." (Emphasis added.)

One question asked in Interpretation No. 12 was whether or not the carrier could discontinue providing camp cars. That question was answered in the affirmative. A second question, however, was whether he could thereby escape payments under Section I. The answer to that question was NO, unless the men reported to a fixed headquarters throughout a period of 12 months or more. In other words, unless they did so they remained Section I employees even though not operating from moveable equipment.

The character of service of the employees for whom these claims are made is Section I service under Award No. 298 and is thus covered by the provisions of Section I of the Agreement of May 6, 1968. This is so because they were all assigned to duty at a point which did not remain the same for a twelve month period, they were not engaged in relief service and the service in which they were engaged required them to regularly throughout their work week live away from home. Thus by the provisions of the May 6, 1968 Agreement carrier was required to reimburse them for the actual reasonable expense of lodging not in excess of \$4.00 per day and a meal allowance of \$3.00 per day.

There is no occasion for and therefore no opinion is expressed upon a situation in which employees are in Section II service and may therefore come under Rule 41(e).

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 violated.

AWARD

Claims sustained, as discussed in Opinion.

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

ATTEST: E. A. Killeen
Executive Secretary

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