NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19278
Docket Number MW-19122

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to reimburse Steel Bridge Mechanic B. E. Lawson for actual necessary expenses incurred during the final pay period of August, 1969, during which time he was required to leave his assignment on Gang 901 (System File A-9129/D-5026).

(2) The Carrier now be required to allow Steel Bridge Mechanic B. E. Lawson the sum of $11.95 to make him whole for the monetary loss suffered because of the violation referred to within Part (1) of this claim.

(3) The Carrier shall also pay the claimant ten percent (10%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

OPINION OF BOARD: Claimant is assigned to steel bridge gang No. 901 which is headquartered in outfit cars. On the claim dates Claimant was sent to Tulsa, Oklahoma to perform work at that point. Claimant submitted an expense statement covering his actual expenses. Carrier refused to reimburse Claimant for his actual expenses, but limited him to a $7.00 per day maximum.

Claimant alleges a violation of Rule 31, Article 5 of the Agreement between the parties which reads in part as follows:

> "Rule 31. Employes in temporary or emergency service, except as provided in Rule 24, required by the direction of the Management to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at the pro rata rate.
>
> If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total

"of less than eight hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by the railway, actual necessary expenses will be allowed."

Carrier takes the position that Claimant is entitled to recover only that amount set out in the meals and lodging expense provisions of the Arbitration Board 298 Award. The Organization maintains that they reserved their rights under Rule 31. The parties put the question to Arbitration Board 298. Following is the question presented and the answer received:

Q. "Are the employes entitled to preserve the provisions of Article 5, Rule 31, of the Agreement effective April 1, 1951?"

A. "The paragraphs of Article 5, Rule 31 deal with different subjects. The first and second paragraphs apply to employees subject to Section II of the Award. The employees elected to preserve these two paragraphs; therefore, these two paragraphs should continue to apply to employees subject to those rules in the same manner as they were applied prior to the Award. The third paragraph of Rule 31, which the employes also elected to preserve, applies to employees covered by Section I of the Award. In integrating the third paragraph of Rule 31 with Section 1-C-1 of the Award and with Article 5, Rule 24 of the agreement between the parties, there should be no duplication of benefits."

It is the position of the Carrier that the above answer had the effect of limiting the reservation of paragraphs 1 and 2 of Rule 31 to those employes covered by Section II of the Award of Arbitration Board 298.

Had the Arbitration Board simply answered the question in the affirmative or negative the case could be easily decided by the Board. As it is it is unclear whether the reservation of Rule 31 is applicable to the Claimants. We are asked to resolve a dispute as to the meaning of the interpretation rendered by Arbitration Board 298 when it answered the question as set out above. Our right to do so has been raised by the Carrier in the form of a plea to this Board's jurisdiction.

Award 18577 (Ritter) correctly states the controlling jurisdictional doctrine:

"In carefully considering the jurisdictional question involved in this dispute, this Board finds that Awards 17845 (Dolnick) and 18485 (Rosenbloom) are controlling. By and under authority of these Awards, Arbitration Board No. 298 has exclusive jurisdiction to rule on any difference arising as to the meaning of its (Arbitration Board No. 298) Award. Had the jurisdictional question not been raised, the result would probably have been different. However, this Board is limited in its power to the consideration of disputes within its jurisdiction conferred under the Railway Labor Act. Also, under the same Act, Arbitration Board 298 is clothed with the final power to determine the controversy. See Brotherhood of Railroad Trainmen vs. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 248 Fed. Supp. 1008 and Section 157 of Title 45, U.S.C.A., Par. 3rd. Subsection (c)."

For the foregoing reasons, this dispute will be dismissed without prejudice.

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 no jurisdiction to decide the dispute which is the subject matter of this claim.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E.A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1972.