NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19478

THIRD DIVISION Docket Number SG-19442

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the Agreement of February 15, 1968, and Interpretations in connection therewith, when it established a signal gang at Hinton, West Virginia, without providing lodging and eating facilities and did not compensate the gang employes for same; and when the employes did not report to the same work point throughout a period of twelve (12) months or more.

(b) Carrier now be required to compensate Signal Foreman W. W. Boyd, Signalman W. W. Hatcher, and Assistant Signalman R. W. Durrett $4.00 per day for lodging and $3.00 per day for meal allowance each date claimants qualified for such compensation from January 8, 1970, to and including February 20, 1970. (Carrier's File: 1-SG-278)

OPINION OF BOARD: The claimants seek an award for lodging and meal allowances allegedly due them under an Agreement which is dated February 15, 1968 and which evolved from the award of Arbitration Board No. 298. The period of claim is January 8 to February 20, 1970. The February 15, 1968 Agreement is an amendment to the Agreement between the parties, bearing effective date of August 16, 1946 and reprinted May 16, 1958.

As in other cases involving Arbitration Board No. 298, the instant record contains references to lack of jurisdiction by this Board. In light of the entire record, however, these references do not in fact raise a jurisdictional question and we shall proceed accordingly.

FACTS OF RECORD

In pertinent part the February 15, 1968 Agreement provides as follows:

"1. It is agreed that there be added to the current agreement a new rule reading:

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. If lodging is furnished by the railroad company, the camp cars or other lodging furnished shall include bed, mattress, pillow, bed linen, blanket, towels, soap, washing and toilet facilities. (In lieu of this Article I, Section A, Subsection 1, the parties agree that for employes assigned to camp cars (or camps) as covered by Rule 64 (e) in effect prior to October 15, 1967, that effective October 15, 1967, the provisions of Article I, Section A, Subsection 1 will be met by the daily differential substituted in new Rule 64 (e), effective October 15, 1967, which revised Rule 64 (e) is set forth later in this agreement.)

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 employee shall be reimbursed for the actual reasonable expense thereof not in excess of $4.00 per day. (Emphasis added)

B. Meals

1. If the railroad company provides cooking and eating facilities and pays the salary or salaries of necessary cooks, each employe 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. The foregoing per diem meal allowance shall be paid for each day of the calendar week, including rest days and holidays, except that it shall not be payable for work days on which the employee is voluntarily absent from service, and it shall not be payable for rest days or holidays if the employee is voluntarily absent from service when work was available to him on the work day preceding or the work day following said rest days or holiday."

On January 8, 1970 and continuing through May 23, 1970, Carrier established a signal gang at Hinton, West Virginia. In compliance with the Agreement, the signal gang jobs were advertised and claimants were the successful bidders. Though the signal gang was at Hinton from January 8, 1970 through May 23, 1970, the claim herein is limited to the period January 8 through February 20, 1970.

It is Carrier's position that the signal gang was established pursuant to Rules 26 and 43 of the Schedule Agreement and, further, that, because Rule 26 applies to the situation, the February 15, 1968 Agreement is not applicable. Rule 26 and Rule 43, in pertinent part, read as follows:

"RULE 26 - ASSIGNING HEADQUARTERS AND HOME STATION

Gang employees will either be worked from an established central headquarters point as home station or may be furnished camp cars as home station. Employees in gangs will be assigned by bulletin to a particular gang."

"RULE 43 - SYSTEM GANGS

(a) System signal gangs will be established. No system gang or part thereof will be worked on a home seniority district unless there is at least one home seniority district gang at work thereon.

Except for signal work in connection with new rail laying, necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires, and slides, system gangs will be confined to construction work on new installations."

In its submission Carrier asserted that the claimants spent their nights at home during the pertinent period, and, thus were not living away from home as contemplated by the February 15, 1968 Agreement; however Petitioner's rebuttal brief correctly states that this issue was not raised on the property and, hence, is not properly before the Board in this Appeal.

RULINGS ON PETITIONER'S CONTENTIONS

Attention has been called to Award No. 19075 (O'Brien) which involved similar issues between the same parties, and which denied lodging and food allowances because the claimants lived at home. We have already indicated that whether the claimants lived at home during the claim period is not before the Board, and, therefore, it is not necessary to deal with the applicability or inapplicability of Award No. 19075 to the instant case.

This is a problem of interpretation and application of the intent of the February 15, 1968 Agreement, as derived from the Agreement itself, pertinent Rules of the Schedule Agreement, and any other pertinent circumstances in the record. We will also consider Interpretations of Arbitration Board No. 298, because, although not controlling in this forum, such Interpretations have been useful to the Board in its consideration of similar cases in the past.

We dispose first of Carrier's position that Rule 26 and Section one of the February 15, 1968 Agreement cannot concurrently apply to the signal gang herein. The thesis is one of mutual exclusivity, so that Rule 26 being applicable excludes the Agreement from applicability. We cannot concur with this position.

Rule 26 and the Agreement cover different subject matter, and the operations of one are not dependent upon the other. A Rule 26 situation may or not be covered by the Agreement, depending upon all of the circumstances of a particular situation. Furthermore, Rule 26 is a "headquarters and home station" rule which gives Carrier discretion to work gang employees from a "central headquarters as home station" or from "camp cars as home station." In either case employees must be assigned by bulletin to a particular gang. That Carrier's discretion was exercised in this case to establish a central headquarters as home station, and that Carrier assigned gang jobs by bulletin, means that it put Rule 26 to a proper use, nothing more. Other considerations must be examined to determine whether the Claimants were covered by the February 15, 1968 Agreement in a manner which obligated Carrier to pay the claimed allowances for lodging and food.

The determination of Carrier's obligation for lodging and food allowances, where, as in this case, Carrier decides to establish a fixed or central locations as headquarters, has been dealt with by Interpretations No. 12 and 14 issued by Arbitration Board No. 298. The criteria laid out in those interpretations are well known and we find no reason to alter them in the case at hand.

In pertinent part Interpretations No. 12 and 14 now follow:

> "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. Employes assigned to such gang are recruited from an entire seniority district and work away from home while assigned to the gang.
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> May Carrier discontinue providing camp cars and escape payment under I-A-3?
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> * * * * * * * *
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> 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.

"INTERPRETATION NO. 14 (Question No. 3; BRS and UP)

QUESTION: Seniority district covers a division or in some instances the entire railroad. In order to protect seniority, agreement rules require employes to bid for jobs in a gang which works over the entire seniority district or entire railroad as work progresses. Employes bidding in such positions in the gangs are recruited from the entire seniority district and work away from home while assigned to the gang.

May carrier establish a fixed location as headquarters for the gang and escape payment under I-A-B or C, especially in view of the fact that none of the employes in such gang have their homes in the vicinity of the fixed location and further, that it would not be logical to move their homes to the location of the new work points as work progresses?

ANSWER: This question is answered by Interpretation No. 12."

The criteria embodied in Interpretation No. 14 are directly applicable to the instant case. However, application of these general criteria does not mean that both lodging and meal payments follow automatically, because the two types of allowances have different bases which may or not exist concurrently in the same situation.

In the February 15, 1968 Agreement the lodging allowance is limited to the "actual" reasonable expense thereof not in excess of $4.00 per day. This apparently reflects recognition that some employees covered by its terms would spend nights at home, in which case there would be no actual expenditure for lodging. And by the limitation to "actual" expense, the intent is made clear that no lodging allowance is to be paid in these cases. Whether the herein claimants spent nights at home is not before us, as previously noted. Nonetheless the record contains no evidence of "actual" expenditures for lodging and we shall therefore deny the part of the claim relating to allowances for lodging.

The meal allowance provisions of the agreement are 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.

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."

The language concerning restaurants and commissaries in paragraph 3 appears to be an impediment to recovery for meal allowances in the instant case. The impediment is more apparent than real, however, because paragraphs 1, 2, and 3, must be read together in their entire context and given a plausible meaning as a whole. Initially we conclude that, notwithstanding the terms "restaurants and commissaries", paragraph 3 should not be given such a narrow meaning as to exclude the meal allowance where food is purchased in a boarding house, private home, grocery store, or other such conventional sources of food. We further conclude that the meaning of the three paragraphs as a whole is that Carrier has the right to furnish meal facilities under paragraphs 1 and 2, in which cases the meal allowances are lower than in paragraph 3, but that when he does not furnish meal facilities under paragraph 1 and 2, the employee shall be paid a meal allowance of $3.00 under paragraph 3.

It is also significant that the term "actual" does not limit the meal allowance, although it does limit the lodging allowance. This strongly suggests recognition that consumption of food entails expense, irrespective of the source of the food, whereas lodging entails expense only when commercial lodging is actually purchased.

Interpretation No. 66 of the Arbitration Board No. 298 is consistent with the foregoing. In that Interpretation meal allowances are treated as allowable because Carrier did not furnish meal facilities, without any mention of the source of the meals; the interpretation also qualifies a reference to lodging expense by the term "if any", thus indicating, as we have held here, that the lodging allowance will be paid only where actual lodging expense is shown.

Interpretation No. 66 now follows in full:

"INTERPRETATION NO. 66 (Question No. 12; BRS and LVRC)

QUESTION: Question of whether certain named Signal Gang employees are entitled to daily meal and lodging allowances for certain periods, Account Gangs established without camp cars; and headquarters changed in less than a year.

ANSWER: The employees in question are in a type of service covered by Section I of the Award. Since these men do not report at the same point throughout a period of twelve months or more, and since no lodging or meal facilities are furnished by the Carrier, they are entitled to the meal allowance provided in Section I-B-3 and lodging expense if any under I-A-3. See Interpretation No. 12."

For the reasons discussed hereinabove, we will dismiss the claim as to the lodging allowance and sustain the claim for meal allowances.

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 violated to the extent indicated in the Opinion.

A W A R D

The claim is dismissed in part and sustained in part, as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.