

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19577
Docket Number MW-19590

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The Carrier violated the Agreement when it refused to allow the **members of Gang 51** the actual meal and mileage expenses incurred when a relief cook was not provided during the **cook's** vacation from September 24 through October 23, 1970 and from October 26 through November 6, 1970 (System File Nos. 1-23/E-381-6 and E-560-6).

(2) The Carrier again violated the Agreement when it refused to reimburse the members of Extra Gang No. 150 for the actual cost of meals taken when a relief cook was not provided during the cook's vacation in 1970 (System File 1-23/E-560-11).

(3) **J. C. Broyles, Jr.**, Johnny S. Stevens, O. T. Perkins, Clarence **A. Tankersley**, Jack E. Green, James M. **Jernigan** and O. **Crowe** each be paid their expenses as itemized on the expense sheets they submitted for the period from **9/24/70** through **10/23/70**.

(4) T. **L. Stevens, Jr.**, O. **Crowe**, C. H. Tankersley, **J. S. Stevens**, J. M. **Jernigan** and O. T. **Perkins** each be paid their expenses as itemized on the expense sheets they submitted for the period from **10/26/70** through **11/6/70**.

(5) C. **H. Johnson**, E. Travis, R. Hole, C. D. Meadows, A. A. Taylor, D. Boyle, F. **Wilson #6**, M. **G. Foster**, B. Woodring, W. B. Shields, G. E. Carver and A. Adams (all assigned to **Extra Gang 150**) be paid their actual necessary expenses **when** a relief cook was not provided during the cook's vacation beginning on November 30, 1970.

(6). The Carrier further violated the Agreement when it failed to provide a **cook** for **APE Gang No. 153** **subsequent** to April 1, 1970, except for one week in February 1971 (System File **1-12/E-560-12**).

(7) **Each employee** assigned to **APE Gang No. 153** be allowed the difference **between** the actual cost of their respective meals and the two dollars (\$2.00) per day they were paid for meals by the Carrier for each day that **APE Gang No. 153** is **not** provided with a cook. (**Employees** assigned to this gang on date of claim presentation were James **L. Downs**, Charles E. Browning, Robert D. Vaughan, Dennis L. Benbrook, Danny **Harrington**, David Joe Lydick, **Venneth Dale Kerrick** and A. L. Fingers.)

OPINION OF BOARD: Claimants were members of either Gang 51, Extra Gang 150 or AFE Gang 153 and were required by their work to live in camp cars **throughout** their work week. Each gang had seven or **more** men during the periods in question. The claim in this case involves four instances when the Carrier did not furnish a cook to the gang even **though it** did furnish cooking and eating facilities. In each instance the employees were paid a meal allowance of \$2.00 per day but claimed actual expenses.

Effective October 15, 1967 certain provisions of the Award of Arbitration Board No. 298 were incorporated into and became part of the working rules agreement. **Two** of these provisions are relevant to this matter:

"RULE 49, I, (A) (f) One cook will be furnished for each gang of seven (7) men **or** more, including the foreman, assistant foreman and machine operators working with the gang. When the gang exceeds 16 men, an assistant cook will be furnished, and for 30 men or over two assistant cooks will be furnished. . . .

(E) (a) 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 Petitioner argues that Rule 49 I, (A) (f) is controlling and Rule 45 I, (D) (a) 2 is applicable only when a gang consisting of less than seven men is involved. We find nothing in the Rules and no evidence in the record to sustain this **last** contention. The Organization also argues that past practice **supports** its position **and** presents in its submission a letter dated June 22, 1971 from members of AFE Gang 153 as evidence of this practice. It is **well** established that we are precluded from considering this letter as evidence since it was never presented during the handling of this case on the property. No further evidence appears in the record in support of the past practice **argument**.

For reasons that are never made clear, Carrier in its submission concedes that members of A.F.E Gang 153 should have been paid their actual necessary expenses for the time they were not furnished a **cook** and only allowed \$2.00 per day. Without speculating as to the reasons for this **in-**consistent position, we shall certainly not disturb this decision of Carrier.

Both parties agree, and are well supported by this Board's prior Awards, that Special rules take precedence over general rules. Our reading of the pertinent rules leaves no doubt in this case; the general rule is clear in that Carrier will furnish one cock for each gang of seven men or more; the specific rule is also clear and unambiguous in that if Carrier provides the facilities but does not furnish a cock each employee will be paid a meal allowance of \$2.00 per day.

We find nothing in the Rules and nothing cited by Petitioner justifying the payment of actual meal expenses. We are not empowered to rewrite the Rules; that task we leave to the parties in negotiation. The claim must be denied, except as to members of AFE Gang 153.

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 to the extent indicated in the Opinion.

A W A R D

Claim sustained and denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.