NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19695

THIRD DIVISION

Docket Number SG-19551

Benjamin Rubenstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) Carrier violated the Signalmen's Agreement, particularly Appendix "N", when, beginning March 7.6, 1970, Carrier did not provide K&A Division Signal Gang No. 9 a cook and did not compensate the gang employes for the lunch meal periods in accordance with the Appendix.

(b) Carrier now pay to employes of K&A Division Signal Gang No. 9 additional time equal to twenty-five (25) minutes overtime each work day a cook is not provided the gang. This claim commencing March 26, 1970, and continuing thereafter until a correction of the violation is made. (Carrier's File: G-342-5)

OPINION OF BOARD: The issue involves an interpretation of Appendix "N", entered into on December 27, 1968, interpreting the last sentence of Rule 11, of the basic agreement dated February 1, 1967, between the Brotherhood of Railroad Signalmen and Louisville and Nashville Railroad Company. The sentence of Rule 11 referred to in Appendix "N" reads:

> "Employees assigned to camp cars will be allowed the full meal period at the camp cars".

The first paragraph of Appendix "N" reads:

> "In the application of the last sentence of Rule 11, it is the intention that employees who are working at distances where they are not returned to their camp cars for the noon meal period are not to be placed in any different situation with respect to the meal period than those returned to the cars for the noon meal period."

The Appendix then covers three instances in which employees are not returned to the camp cars for their noon meal period. The third instance provides:

> "It is agreed, that in instances where cook is not provided and employees are not returned to their camp cars for the noon meal period but are taken to a restaurant for meals, the meal being paid for by the Company, that portion of the lunch period, not to exceed twenty minutes while employees are actually eating, will not be paid for but the employees will be returned to their work assignment and paid for the remainder of their noon meal period at overtime rate." (emphasis supplied)

The employees, involved herein, were working at a site about 9 miles away from their camp cars. The cook employed at the camp cars took a leave of absence due to illness and could not be replaced. The employees were taken to a restaurant for their meal, and from there to the camp cars to spend the remainder of their meal period.

The claimants contend that the Carrier violated the provisions of the last paragraph of Appendix "N" by taking them from the restaurant back to camp instead of their site of employment. They demand 25 minutes at overtime pay for each day of such occurrence.

The Carrier disagrees with the interpretation placed by the claimants on the above quoted provision of Appendix "N". It contends that the appendix applies solely to situations where the sites of employment are at far distances from the camp, where it is not practical to return them to the camp for their "00" meals. In the instant situation, the site of employment was only nine miles away from the camp and in fact, the employees were returned to camp after the noon day meal.

The Carrier argues that:

1. Appendix "N" does not prohibit the return of employees to the camp car site when cook is not provided.

2. It is well settled that Carrier is free to determine the way in which work and operations are to be performed in the interest of economy and efficiency except as limited by law or agreement.

3. The burden is upon the Organization to show that Carrier's actions violate some part of the agreement, not upon the Carrier to point to some rule which permits its action.

4. The Board must apply the rules as written and is not empowered to rewrite them through the guise of interpretation.

It is well settled that the Board may only interpret written agreements between the parties and has no authority to alter, amend or detract from written agreements. (Award 15380, Ives; 16423, O'Brien, citing Awards 13491, Dorsey, 10203, Gray, and 18088, Quinn.)

The introductory paragraph of Appendix "N" seems to be clear and unambiguous in stating the reason for the Appendix: "when (employees) are not returned to the camp cars for the noon meal period, (they) are not to be placed in any different situation...than those returned to the cars...."

The established policy of this Board has been to intrepret provisions of a contract in line with the entire agreement.

Tbe second sentence of Rule 11, reads:

> "If the meal period is not afforded between these hours. it shall be paid for at the overtime rate, and twenty minutes in which to eat shall be afforded at the first opportunity thereafter and without deduction in pay." (emphasis supplied)

The intention is clear that if a meal period is not afforded, it shall be paid for at overtime rate.

The last sentence of Rule 11, which caused the adoption of Appendix "N" reads:

> "Employees assigned to camp cars will be allowed the full meal period at the camp cars." (emphasis supplied)

The intent of this sentence is also clear: such employees must be allowed "the full meal period at the camp cars." Conversely, the granting of less than a full meal period at the camp car would be a violation of the rule.

Apparently, numerous grievances and claims arose in connection with the interpretation of the last sentence of Rule 11, and the parties mutually agreed on Appendix "N" for the purpose of interpreting the last sentence of Rule 11. The intent of Appendix "N" was to abolish the difference between employees who are returned to the camp cars for the noon meal period and those who are not returned to their camp cars. The Appendix then sets forth three instances:

> 1. When they are returned to the camp car they are allowed the full meal period.
>
> 2. Where employees are not returned to their camp cars, the meal period shall be paid for at overtime rate.
>
> 3. In instances when a cook is not provided for and employees are not returned to their camp cars for the noon meal period but are taken to a restaurant for meals, and the meal is paid for by the Company. the employees will be allowed twenty minutes for their meal, which time will not be paid for, but these employees will be returned to their work assignment and paid for the remainder of their coon meal period at overtime rate.

A reading of Rule 11 and Appendix "N" makes the intent of the parties very clear:

1. Abolish the difference between employees who are returned to camp and those who are not returned to camp.

2. Those that are returned to camp are allowed their full meal period at the camp cars.

3. Those that, because of long distances away from camp cars, can not be returned to the camp cars will be paid for at overtime rate for the entire meal period, twenty minutes of which shall be allowed for eating.

4. In cases where cooks are not provided and employees are not returned to their camp cars for the noon meal period, and if the carrier pays for the meal, the employees "will be returned to their work assignment" and paid for their noon meal period less twenty minutes for eating, at overtime rates.

Thus, the parties, sought to abolish the distinction and disputes that arose in the interpretation of the last sentence of Rule 11.

There is no evidence, except the statement of Mr. Adams, (Carrier's Exhibit K), that the intent of Appendix "N" is to differentiate treatment of camp car employees on the basis of the proximity of the work site to the camp car site. Although the question of distance was undoubtedly discussed, it must have been in relation to the last two paragraphs. The basic provision of the last sentence of Rule 11, is that employees assigned to camp cars be allowed the "full meal period at the camp cars."

The word "will" is imperative. It places an obligation. It is not "optional" with the Carrier "to determine whether or not to return the employees to their camp cars", as is contended by the Carrier. Had this been the intent of Appendix "N", the word "will" should have been substituted with the word "may".

Rule 11 and Appendix "N" give the right to employees at camp cars to spend their full meal period at their camp cars, or be returned to their work sites and be paid the overtime provided for.

The Carrier could have returned the employees to their work site and thus, save itself part of the wages paid for the 25 minutes overtime.

The Carrier violated the provisions of the last paragraph of the Memorandum of Understanding and the employees are entitled to be paid as claimed.

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.

A W A R D

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST : E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1973.