

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19739**
Docket Number SG-19441

John H. Dorsey, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(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 current Signalmen's Agreement, particularly Rules 59 and 27, when it did not reimburse Signal Maintainer Hal **Harlow** for meal expenses he incurred on December 21 and 23, 1969.

(b) Carrier now pay to Signal Maintainer Hal **Harlow** the amount of \$3.30 as reimbursement for the expenses and as a consequence of the violation. (Carrier's File: **1-SG-280**)

OPINION OF BOARD: Claimant, an hourly rated **employee**, was employed by Carrier **as** a Signal Maintainer with Headquarters at Allen, Kentucky a prescribed assigned territory. His hours of service were **7:30** A.M. to 4:00 P.M., inclusive of a 30 minute meal period. Saturday, Sunday and **holidays were** his regular days off duty.

At **2:15** A.M., Monday December 22, 1969, Carrier experienced a **derailment** in the vicinity of R. C. Junction, Kentucky, Mile Post **122, Big** Sandy Subdivision. It damaged the signal system at that point. The point **was** within Claimant's assigned territory.

At **2:45** A.M. on December 22. Claimant was called to perform service relative to the derailment. He continued to work that day until his regularly assigned quitting time for a work day: 4:00 P.M.

On the following day, December 23, he reported for work at his regularly assigned starting time of **7:30** A.M., and he continued in service on that day until after 7:00 P.M.

At the end of December Claimant filed a Monthly Expense Report in which he made claim for: **(1)** \$1.45 for breakfast for the day he **was** called at **2:15** A.M.; and **(2)** \$1.85 for dinner for the following day when he **was** in service from his regularly assigned starting time of **7:30** A.M., until after 7:00 P.M. of that date. He and Signalman, in the handling of the Claim on the property, cited Rule 27(b) as contractually applicable. That provision, in pertinent part, with emphasis supplied, reads:

"(b) Hourly rated employees performing service requiring them to leave their home station and not return the same day sent out or who leave before 6:00 A.M. and/or return after 7:00 P.M. on the same day, will be paid ... Necessary actual expenses "ill be allowed for all meals, lodging, and sleeping car accommodations secured while sent away from home station under this section."

It is Carrier's defense that: (1) there was an emergency -- this is not questioned --; (2) the work performed by Claimant was not off his assigned territory; (3) the words "home station" and "headquarters" are not **synonomous**; (4) Rule 27(f) is a specific rule which prevails over Rule 27(b) and, therefore it is the applicable Rule; and (5) since Claimant did not perform services off his assigned territory he was not entitled to be furnished meals or actual expenses in lieu thereof.

Rule 27(f), with emphasis supplied, reads:

"In emergency cases such as derailments, floods, snow blockades, fires, and slides, employees taken away from their camp or boarding outfits or off their assigned territories "ill be furnished meals and lodging by the railway company or actual expenses in lieu thereof."

we call the attention of the parties to: (1) the Claim as filed on the property was for breakfast on December 21 and was not questioned in the handling of the case on the property -- Carrier in its Submission gives the date as December 22; but the date of occurrence, we find, is not a fatal variance in our adjudication of the **ultimate issue** -- we have accepted the date of December 22; and (2) Carrier has raised a number of issues which were not handled on the property in the usual manner; but were responded to in Signalmen's Rebuttal Submission -- such we dismiss.

The instant dispute involved a derailment but did not involve an employe (Claimant) being taken off his assigned territory.

A comparison of Rule 27(f) and Rule 27(b) does not convince us that it is a specific Rule which unequivocally prevails over Rule 27(b).

Rule 27(b) specifically provides that "Hourly rated employees performing service requiring them to leave their home station ~~and~~ "ho leave before 6:00 A.M., and/or return after 7:00 P.M. on the same day, will be paid "Necessary actual expenses . . . for all meals while sent away from home station under this section."

There is no evidence in this record that there is a distinction on the property between the meaning of "home station" and "Headquarters". Both convey the idea that each is a point at which an **employe** reports for service

and is relieved from service. This is a rebuttable presumption; meaning, **it** can be overcome only by substantial evidence of probative value to the contrary.

In the instant case the record supports our finding that Allen, Kentucky, was Claimant's "home station" within the contemplation of Rule 27(b). Consequently, we find and hold on the basis of the facts of record that Rule **27(b)** -- not Rule 27(f) -- is the applicable Rule.

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

Carrier violated Rule 27(b) of the Agreement.

A W A R D

Claim sustained.

RATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 11th **day** of May 1973.