

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19755
Docket Number Z-19491

Benjamin Rubenstein, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company that:

(a) The Southern Pacific Transportation Company violated the Agreement between the Company and the **Employees** of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958, including revisions) and particularly the first paragraph of Rule 25, which resulted in violation of Rule 70, when **it** refused to reimburse Mr. Blanchette and Mr. **Ashcraft** for meals purchased at **Tipton**, California, on March 10, 1970.

(b) Mr. A. J. Blanchette be reimbursed the **amount** of \$2.47 as he submitted on Form C.S. 148; Mr. C. H. **Ashcraft** be reimbursed the amount of \$2.52 as submitted on Form C.S. 148 for March 1970.

/Carrier's File: SIG 108-43/

OPINION OF BOARD: Claimants allege a violation by the Carrier of Rule 25. reading as follows:

"Rule 25. MEALS AND LODGING **FURNISHED.**

In emergency cases. such as derailments, wash outs, snow blockades, fires and slides, employees taken away from their headquarters to perform work elsewhere shall be furnished meals and lodging by the company where possible. If the company can not or fails to furnish such meals and lodging, the employees shall be reimbursed for the actual and necessary expense thereof.

Employees assigned to Signal Shops and used for road work beyond local (one fare) transportation facilities of the terminal shall be reimbursed for the cost of all meals and lodging.

Signal maintainers, when used to perform work outside of their assigned territory, **will** be reimbursed for actual necessary expense for meals incurred while working outside said assigned territory."

The claimants are signal employees. On March 10, 1970. after their completion of the day's work, their foreman received a call from Ducor, about 43 miles away, to proceed there, **immediately**, to fix a pole which was demolished as a result of being struck by an automobile.

After firing the pole, claimant's proceeded back to their station in **Tulare**, but on the way, they ate dinner, and now request payment for the dinner expenses pursuant to the provisions of Rule 25.

The carrier refused to honor the claim on the ground. that the work involved, is not of an emergency type as contemplated by Rule 25.

The first issue involved here is whether the work of replacing the pole was an emergency or not. If the answer is in the affirmative, another issue arises: does the phrase, "meals and lodging", intend that they **must** occur together, and if one of the elements is missing, is the carrier not liable for either?

Webster, defines emergency as "an unforeseen situation calling for **immediate** action" (Webster's New American Dictionary). The Oxford **Universal** Dictionary (1955) defines emergency as "The sudden or unexpected occurrence (of a state of things, etc.); a sudden occasion".

We can not agree with the carrier that Rule 25 is limited to derailments, washouts, **snow** blockades, fires and slides. If that were so. the phrase "such as" would have been superfluous. The inclusion of that phrase makes the intent of the Rule clear and unambiguous. It intends to apply not only to emergencies listed, but also to others of similar nature.

The destruction of the pole and the line it carried was certainly an "unforeseen situation." If it were not "immediately" repaired, it could have interfered with the operation of the trains. as much as any of those emergencies actually listed in Rule 25. **The mere** fact that the **signal** supervisor instructed the signal foreman to **immediately** proceed to the pole, shows, that at least, in his mind, this **was** a situation requiring **immediate** action, and thus, was an emergency.

The organization in its rebuttal statement said: "There can be no question but that the **automobile** accident suddenly disrupted Carrier's signal system and it was necessary (that) the system be restored to operation without delay". The factual situation here is such, that it became incumbent upon the carrier, which denied "**emergency**", to prove it was not. The burden of proof shifted to the carrier in this respect. It was the only one that could prove whether the destruction **of** the pole **was**, or was not, an emergency, needing **immediate** repair.

The cases cited by the carrier are not directly in point and do not answer this question.

Absent proof to the contrary, we must assume that the destruction of the pole and signal line was one of the emergencies contemplated by the Rule.

The subsidiary issue raised by the carrier, to wit: that the Rule contemplates both meals and lodgings, and one may not be honored without the other, must be rejected, as not intended. We do not believe, that the parties intended to deprive an employee of a meal if he was called upon to work in an emergency, unless he stayed away from his site of operations and also used lodgings. This question, in our opinion, must be answered in the negative.

Award No. 18971 is not in point. There, the rule about meals and lodgings applied only to cases "when employees are unable to return to their headquarters on any day". There we found that they did return to their headquarters and the rule did not apply. The instant Rule is not limited to situations where employees are unable to return to headquarters.

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

The employer violated the provision of Rule 25.

A W A R D

Claim is sustained.

NATIONAL **RAILROAD** ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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