

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20011**
Docket Number X-19737

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

(a) The Carrier violated **the** current Signalmen's Agreement between the Brotherhood of Railroad Signalmen and the Chicago and North Western Railway Company, particularly Rule 19, when it failed to allow actual necessary expenses to Mr. Vern Davis when he was used to fill the Signal **Main-tainer's** position at Adams, Wisconsin.

(b) The Carrier now compensate Mr. Davis the difference between what his actual necessary expenses were and what the Carrier allowed on his October expense report--the difference being \$45.00.

(c) The Carrier also compensate Mr. Davis the difference between his actual necessary expenses and what the Carrier allowed on his November expense report---the difference being \$44.75.

/Carrier's File: 79-8-68/

OPINION OF BOARD: Claimant was a member **of** a **test** crew headquartered in camp cars at South Beaver Dam, Wisconsin. During the claim period he was temporarily filling a Signal Maintainer position at Adams, Wisconsin, 60 miles away from South **Beaver** Dam. Adams was Claimant's legal address and his mother's home.

Claimant was paid \$3.50 per day expenses by Carrier based on the negotiated interpretation of Award of Arbitration Board No. 298. Claimant however, requested payment of the difference between \$3.50 per day and actual expenses, claiming the expenses under the provision of Rule 19. That Rule provides:

"19. Hourly rated employees assigned to road work requiring traveling, and who may or may not return to headquarters each day, will be compensated on the following bases:

(a) On days **employees** return to headquarters they will be compensated on basis of straight time, exclusive of **meal** period, for regular **hours** and at rate and one-half for time worked outside thereof: straight time for all time traveling **or** waiting.

"(b) On days they remain **away** from headquarters over night they will be compensated on basis of straight **time**, exclusive of meal period, for regular hours and **at** rate and one-half for time worked outside thereof. They will be allowed eight consecutive hours off duty within the ten hour period preceding the starting time of their next regular work period. If required to travel from one point to another between conclusion of work period and 10:00 PM, will be compensated for such travel time at straight time rate, with a minimum allowance of one hour and not to exceed three hours. If not allowed eight consecutive hours off duty within the ten hour period preceding **starting** time of the next regular work **period**, **will** be allowed compensation at straight time **rate** for any such time not allowed. When not permitted to return **to** headquarters for rest days or holidays, **as** specified in rule 13, will be allowed compensation on **basis** of

- minimum of eight hours at rate and one-half, **Actual** necessary expenses will be allowed."

It should be noted that Rule 17 provides that all employees will have a **designated** headquarters and further that "Camp cars to which an **employee** is assigned will be the designated headquarters."

Carrier asserts that there is no real evidence presented by **Petitioner** relative to the "actual necessary expenses". We must reject this argument since it was not raised on the property and the record indicates that at no time did Carrier question the Expense Reports submitted by Claimant, **per se**.

Carrier argues, in **its** submission, that Rule 19 above was superseded by the provisions of the Memorandum Agreement of December 23, 1969 which was adopted in lieu of Section I, II. and III of Arbitration Award No. 298. Again, **this** argument was not raised on the property and is not properly before us. Additionally it should be **noted that** there is no evidence in the record to indicate that Rule 19 was superseded at any time.

The issue then becomes whether or not Claimant is entitled to actual **expenses** under **Rule** 19 while living at home, having already been paid \$3.50 per day for meals. There have **been** a number of Awards on this issue, with opposite conclusions. Upon examination, the Awards cited by Carrier either deal with "home station" as distinct from headquarters or different Rules, and are not persuasive in their reasoning. We affirm the reasoning represented in those cases holding that when a claimant is away from headquarters he is entitled to reimbursement for actual and necessary expenses (when meals and lodging are not furnished by Carrier) regardless of whether his work location was at his "home". For example, in Second **Division Award 5001** we said:

"The only question here is whether the **expenses** claimed were "actual necessary", for it is undisputed that Claimant was away from headquarters and not furnished meals or lodging. In determining **the** question, the fact that Claimant maintained a home for his family and himself at St. **Cloud** is not controlling. He is entitled under Rule 10 to an allowance for actual expenses incurred while in St. Cloud whether or not he slept or dined in **his** own **home** there,"

See also Awards 16463, 10923, 17536, and Second Division Award 5435. **Rules** 17 and 19 **are** clear and unambiguous and, as distinguished from **the** reasoning in Award 12030, we do not have the authority to rewrite them. **The** Claim must be sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.