NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20081

THIRD DIVISION

Docket Number SG-19806

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation 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) On or about December 24, 1970, the Carrier violated the provisions of the December 23, 1969 Memorandum (Award 298) when it denied the evening meal expenses of M. E. Naber for November 25, December 11 and 18, 1970.

(b) The Carrier now be required to reimburse him for these expenses.

/Carrier's File: 79-3-88/

OPINION OF BOARD: The claim dates in the Statement of Claim are November 25, December 11 and 18, 1970; however, the Carrier has paid the claim for November 2.5, leaving only the claims for December 11 and 18 to be resolved by the Board.

The Claimant was an employee on a crew which was assigned to camp cars located 110 miles from the Claimant's home. Neither a cook nor cooking facilities were furnished for the crew, and their working hours were 7:30 a.m. to 4:30 p.m., with one hour for lunch. Claimant remained overnight in the camp cars during the work week, but he went home on Friday, December 11, and Friday, December 18, 1970, the ending days of the two work weeks involved in this dispute. On December 11, his crew stopped work at 3 p.m.; on December 18, at 11:30 a.m. His claim for actual meal expenses on these dates, for breakfast, lunch, and dinner, was rejected by Carrier and, instead, he was paid $3.50 in lieu of actual meal expenses for both dates.

The Carrier states that its disposition of the claim for meal expense was in accordance with the third paragraph of a Letter of Understanding dated March 17, 1970. The Employees assert that paragraph three of such letter applies to employees who do not actually stay in camp cars, because of the proximity of the camp cars to their homes, which permits daily commuting to work; that Claimant did spend the work week in the camp cars and only traveled home for rest days; and, therefore, such paragraph does not apply to the instant case. The Employees further contend that the claim is payable under Article 1, Section B-3, of the parties' agreement of December 23, 1969.

The pertinent agreement provisions read as follows:

"Third Paragraph of March 17, 1970 Letter of Understanding

3. Item I.B.3. will be applied so as to provide that employes who because of the proximity of the camp cars to their homes do not actually stay in camp cars. but go home at night, will be allowed $3.50 per day in lieu of meal expense on days when service is performed. The term 'on days when service is performed' will be interpreted as meaning for each employe any day on which he works four hours or more. Under no circumstances will there be a combination of the $3.50 per day arbitrary allowance and of actual meal expense on the same day." (Underlining added)

"Article 1. Section B-3 of Agreement Dated December 23. 1969

3. If the employes are required to obtain their meals in restaurants or commissaries, each employe shall be reimbursed for the actual expense thereof."

Paragraph three provides a $3.50 per diem meal allowance for certain employees in Lieu of meal expense; however, in the clearest of terms, the paragraph refers to employees who, instead of staying in camp cars, go home at night because of the "proximity" of the camp cars to their homes. (See above underlined text of paragraph three.) The employee involved in this claim is not such an employee. The Claimant here is an employee who did stay in the camp cars during the work week. He did not "go home at night" because of the "proximity" of the camp cars to his home, within the meaning of paragraph three of the Letter of Understanding; he simply went home because he intended to observe his rest days there. In these circumstances the conditions of paragraph three cannot be said to exist and, in consequence, the conclusion is inescapable that such paragraph has no application to the instant case. While it is not necessary for our conclusion herein, we further observe that paragraph three appears to cover employees who, because of going home daily, take their morning and evening meals at home and therefore have only their noon meal as an away-from-home expense to be covered by the $3.50 per diem meal allowance.

Having found that paragraph three of the March 17, 1970 Letter of Understanding is not applicable here, we further conclude that this case is governed by Article 1, Section B-3, of the December 23, 1969 Agreement and

that, thereunder, the Claimant is entitled to the "actual expense" incurred on the claim dates in obtaining restaurant or commissary meals. In this regard we note that Carrier might well have raised an issue concerning proof of the "actual expense" incurred by Claimant for the evening meals in question, since Claimant completed work somewhat early on December 11 (3:30 p.m.) and quite early on December 18 (11:30 a.m.). Carrier has not raised this issue, however, and instead has chosen to base its entire case upon its contentions concerning paragraph three of the Letter of Understanding dated March 17, 1970. This is made explicitly clear by the following extract from the Carrier's Answer to the Employees' Rebuttal Brief.

> "The carrier's submission shows that the carrier had at least a healthy skepticism about the statement that the claimant ate his evening meals in restaurants on the two dates of claims. The employes have never furnished any evidence to support the statement that he did, except for the employe's own statement that he ate in restaurants. However, the carrier made no attempt to require the claimant that he furnish proof that he did eat such meals in restaurants, because it is irrelevant whether he did or not, under the provisions of paragraph 3 of the understanding of March 17, 1970. Under that provision, if an employe goes home at night he is entitled to only $3.50 for the day; whether he eats the evening meal in a restaurant or at home he is not entitled to actual expenses on such days. Therefore, regardless of whether the claimant ate his evening meal in restaurants on December 11 and 18, 1970, the claims are without merit and should be denied."

As previously indicated, we cannot concur with the Carrier's contentions concerning the Letter of Understanding of March 17, 1970 and we shall therefore sustain the claim.

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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.

CARRIER MEMBERS' DISSENT TO AWARD 20081, WCKET SC-19806

(Referee Blackwell)

In sustaining this claim the Referee has exceeded his jurisdiction by disregarding the plain terms of the agreement and basing the decision on a finding that is arbitrary.

The agreement provision in issue states that "employes who because of the proximity of the camp cars to their homes . . . go home at night, will be allowed $3.50 per day in lieu of meal expense on days when service is performed." It is admitted that the camp cars were close enough for Claimant to go home on the claim dates and he did so. It is also admitted that Claimant performed service on those dates. Claimant therefore bmught himself under the clear provisions of the rule and he was properly allowed $3.50 in lieu of meal expenses for each day.

This sustaining award is based on a finding that Claimant's rights were governed by what he did on other days rather than on the specific days involved. The critical finding reads:

> "The Claimant here is an employee who did stay in the camp cars during the work week."

The controlling agreement provision says nothing about a claimant's activities "during the work week" and contains no reference to work week or to days other than specific "days when service is performed". The agreement defines an employee's rights on the basis of what occurs on each specific day "when service is performed"; and the Referee's conclusion that rights on one day under this rule are governed by what occurs on other days is clearly arbitrary and capricious.

We dissent.

G. L. Naylor

W. B. Jones

G. M. Youhn

H. F. M. Braidwood

P. C. Carter