NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20094

THIRD DIVISION

Docket Number SC-19530

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: {Brotherhood of Railroad Signalmen

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company:

On behalf of Signal Crew Foreman J. D. Schmeling and Assistant Signalman J. J. Lauinger, D. C. Moseman, and T. C. Keating, for reimbursement of actual excess meal expenses during Apri11970. (Carrier's File: F-1066)

OPINION OF BOARD: Carrier suggests a lack of jurisdiction because this dispute involves the Award of Arbitration Board No. 298, and differences es to the meaning or application of the provisions of said Award are reserved exclusively to that Board. See Award 19704 (Blackwell) citing 17845 (Dolnick), 18813 (Devine) and 19278 (Franden).

While we do not dispute Board 298's exclusive jurisdiction, we do not concur that this dispute is jurisdictional in nature; but rather it is one involving a factual dispute.

The Organization cites a violation of its rules agreement, and matters properly before this Board will control disposition of the claim.

Claimants are assigned to camp cars. On the dates In question they were required to incur certain meal expenses. They assert that they are entitled to actual meal expenses under Rule 18. Carrier resists the claim because Arbitration Board No. 298 specifies fixed dally rates.

Award No. 298 stated (with reference to certain employees whose employment regularly requires them to live away from home in "camp cars", etc.) the following entitlement:

"I.

A. Lodging

*

*

B. Meals

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*

*

3. If the employees are required to obtain their meals in restaurants or commissaries, each employee shall be paid a meal allowance of $3.00 per day."

However, Article V of the Award gave organizations the option of accepting any or all of the benefits provided therein, or continuing in effect any or all of the provisions of existing agreements in lieu thereof.

The parties disagree as to the type of option exercised. A thorough review of the record suggests that a resolution of that dispute controls this claim, and that this Board has jurisdiction to determine if the Organization opted to retain Rule 18 in its agreement in lieu of a portion of Award 296.

In late 1967, the General Chairmen exercised options as follows:

"In accordance with provisions of Section V of the Arbitration Board No, 298 Award signed September 30, 1967, to become effective October 15, 1967, this is to inform you of our option of acceptance es follows:

> 1. The railroad company shall provide for employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels as follows:
>
> We accept A and B and subparagraphs thereunder with the understanding this applies only where employees are not now paid actual expenses for lodging and meals under present rules and practices.
>
> We accept C and subparagraphs thereunder.

In the exercise of our option, we desire to retain those portions of current rules of the working agreement which provide greater benefits than intended by provisions of the Arbitration Award."

However, on January 12, 1968, the following latter was forwarded to Carrier :

"In reference to an ● greexaant dated December 12, 1967 between the Carriers and the Organizations participating in Arbitration Board Award No. 298 which extended the time to the Organizations the right of option through January 15, 1968:

By mutual agreement between Lines West General Chairman G. M. Claussen and myself we hereby ● xDress an option to incorporate in our Agreement as follows:

"In Rule 80 of the Agreement:

'Towels, soap washing and toilet Facilities' as listed in Sub Paragraph 1, Sub Section A. -- of Section I

Sub Section B. in its entirety -- of Section I

Sub Section C. in its entirety -- of Section I

We wish to reject the following:

Sub Paragraph 2, Sub Section A -- We already have this in Rule 80 and it would only be a duplication.

Sub Paragraph 3, Sub Section A -- We are at the present allowed actual expenses.

Section II in its entirety.

This option to have no effect on any existing Rules except that part which is to be added to Rule 80."

In its Submission the Organization concedes that the January 12, 1968 letter amended the original option. Thus, the earlier letter is of no probative value other than as an aid in uderstanding the final option.

The January 12, 1968 letter appears to be contradictory. It clearly states acceptance of Section I, Sub Section B "in its entirety." It rejects other portions, but concludes by stating that the option has no effect on any existing Rule except that which is to be added to Rule 80. Rule 80 does not deal with payments for steals, and consequently references to Section I. B. and other sections appear either to be misplaced, or to show a specific desire for inclusion.

The Organization insists that the final phrase of its 1968 option controls, i.e., "This option to have no affect on any existing Rules except that part which is to be added to Rule 80." If the letter were limited to that statement, a clearer picture of intention would be shown. It was not so limited.

This Board has repeatedly held that a moving party has the burden of proving, by a substantive preponderance of the evidence, that its agreement has been violated. See Awards 15536 (McGovern), 10067 (Weston) and 14682 (Dorsey). Sure such a requirement exists hem. A review of the January 12, 1968 letter, and other correspondence fails to clearly and unequivocally demonstrate to the Board that the Organization exercised an option to retain Rule 18, in lieu of Award 298's Section I. B. 3. See Award 17845 (Dolnick).

We, therefore, are compelled to dismiss the claim for failure of proof. See Awards 18148 (Dorsey) and 19939.

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 uithin the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction wer the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Exccutlve Secretary

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

Dissent to Awards Nos. 20094, 20095, 20096 and 20097,
Dockets NOS. SG-19530, SG-19531, SG-19540 and SC-19746

The Majority has made a play on semantics to dismiss these claims. We hold that the meaning and intent of the option exercised is quite clear and that it should have been applied accordingly.

Awards Nos. 20094, 20095, 20096 and 20097 being in error, I dissent.

W. W. Altus, Jr.
Labor Member