

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20286  
Docket Number SC-20111

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 Brother-  
hood of Railroad Signalmen on the Chicago, Mil-  
waukee, St. Paul **and** Pacific Railroad Company:

Cm behalf of Signal Maintainer J. D. **Schmeling** for mileage  
expense of **9¢** per mile for the use of his private automobile in making  
weekend trips home during August 1971 as follows:

22: Miles City, Montana, to Mobridge, South Dakota --292 miles. \$26.28  
27: **Mobridge**, South Dakota, to Miles City, Montana --292 miles. 26.28  
30: **Miles City, Montana**, to McLaughlin, South **Dakota**--262 miles. 23.58

[Carrier's File: F-1080-2]

OPINION OF BOARD: Claimant seeks reimbursement for mileage expenses in-  
curred during August, 1971, at **9¢** per mile, incident  
to making weekend trips to and from his home to his assigned **camp**  
trailer. No free carrier transportation was furnished or available.

Claimant relies upon Rule 25(a):

"RULE 25. (a) When the **majority** of the **employees** in a  
crew elect, and conditions permit, they may make week-  
end trips to their homes. Assigned **time** lost account  
making such trips will not be paid for; however, men  
may make up such lost time either before or after making  
such trips, outside of regular hours of assignment as  
directed by the Management at regular rate. **When** such  
trips are made, free transportation will be furnished."  
(underscoring supplied)

Carrier states that the intent **and** application of Rule **25(a)**  
is to insure free transportation on Carrier's passenger trains, if  
such is available when employees made weekend trips home. In its sub-  
mission to this Board, the Organization advises that the original Rule  
between the Organization and this Carrier stated that free transportation  
would be furnished "consistent with regulations." The Organization

states that in 1938, the above quoted words were deleted and **accord-  
ingly**, the words "free transportation" are not encumbered by any limit-  
ations which would suggest that the transportation was limited to Car-  
rier's passenger trains.

We are unable to discover that said assertion was considered on the property and is properly before us at this time. In **any** event, the Organization's contention concerning the deleted words has been rejected by this Board on prior occasions. See, for example, Award 12351 (**Yagoda**), and the Awards cited below.

The Organization cites a number of Awards holding that if contract language is clear and unambiguous, evidence of past practice is not material to the determination; and that this Board has no authority to change a negotiated provision of an Agreement. We do not dispute the authorities cited by Claimant, but feel that they are not material to a determination of the dispute before us.

Previously, a claim was submitted to this Carrier on behalf of a Signal Foreman for expense reimbursement incurred in February of 1969. **That** claim was based upon the **same** Rule 25(a), cited above, and was decided by this Board on April 21, 1972.

In Award 19138 (**Franden**), the Board noted in denying the Award:

"It is urged upon this Board that the absence of the words 'consistent with regulations' at the end of Rule 25(a) denotes a broader obligation on the part of the Carrier than was present under the rules interpreted in the above cited cases.

We are not **persuaded** that the presence **or** the absence of the words 'consistent with regulations' bears on the proper interpretation of this type of rule. We are inclined to follow the line of cases previously decided by this **Board** and in so doing hold that they apply to the interpretation of the Rule herein."

We note that Docket SG-20057, decided in conjunction with this Award, made an identical claim for expense mileage for the same Claimant for various dates in July of 1971. This Claimant's request for reimbursement for the month of June, 1971 was submitted,

along with other similar claims, to Public Law Board No. 970.

Before Public Law Board No. 970 (Paul Dugan), the Organization relied on the **same** Rule **25(a)**, cited above, and advanced many of the **same** arguments considered by this Board in this case.

Public Law Board No. 970 considered Award 19138, and cited the same language of that Award that has been cited above.

Public Law Board No. 970 concluded:

"Finding said Award No. 19138 of the Third Division of the National Railroad Adjustment not palpably erroneous and therefore controlling in the determination of this dispute, the claim is denied."

While it is conceded that reasonable minds could disagree and reach contrary conclusions concerning **an** appropriate interpretation of Rule 25(a), nonetheless, it appears that various Neutrals have refused to adopt the Organization's view that the absence of the words "consistent with regulations" have a significant bearing on a determination of the dispute. We are confronted with two recent determinations concerning the same Carrier and the same **contract language**. We are unable to state that those Awards are palpably erroneous. It has long been held by this Board that under those circumstances, the Board should not disturb prior determinations dealing with the same Rule and the **same** parties.

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 not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.