

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20405  
Docket Number MW-20336

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employes**  
{ **Burlington Northern Inc.**

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood** that:

(1) The Carrier violated the **Agreement** when It **failed** and refused to allow Work Equipment **Operators** John E. Murphy, J. D. Wisdom and A. W. Anstey **actual expenses** incurred **for** lodging **for** the periods listed in the "ROTE" below (System **Files 33-R-3/MW-24**, 5-1-72; 33-R-31 MW-24, 5-2-72; 33-R-3/MW-24, 5-26-72 and 33-R-3/MW-24, 8-9-72).

(2) Work Equipment Operator John E. Murphy be reimbursed \$55.92, J. D. Wisdom be **reimbursed** \$75.20 and A. W. **Anstey** be allowed \$43.74 which represents the difference between actual expenses Incurred and the amount of reimbursement remitted to them by the Carrier.

**NOTE:** John Murphy.....February 27 through March 25, 1972

J. D. Wisdom....March 1, 2 through March 24, 1972  
March 27 through April 25, 1972

A. W. Anstey....May 25 through June 23, 1972

OPINION OF BOARD: This claim **arises** under Rule 37 which, in pertinent part, **reads** as follows:

RULE 37. EXPENSES--ROADWAY EQUIPMENT OPERATORS AND HELPERS

\* \* \* \* \*

**When a roadway equipment operator or** helper is unable **to return to his** headquarters **point** on **any** night, he **shall** be allowed actual expenses on **bulletined** workdays provided he **actually** performs compensated service on such days.

If the Company &es not provide an outfit car for **such** employees when they are away from **their** headquarters point, **lodging will** be provided by the Compaq **or** the **employees will be reimbursed** for the expenses incurred therefor.

\* \* \* \* \*

It is not disputed that the **Claimants** are covered by the foregoing text. However, the expense **amounts** submitted by the Claimants have been reduced by the Carrier. The reason for the reduction is **that**, the Carrier, by bulletin, designated certain **lodging facilities as** being available to the Claimants at specially reduced **rates** arranged by the Carrier; the bulletin gave notice that the use of lodgings **more** expensive than those designated **in the bulletin** would **result** in the claim for lodging expense being reduced to the rate of the **designated** facilities. The Claimants did not use the designated facilities, but used more expensive facilities, whereupon the **Carrier** carried out its notice that the lodging expense claimed would be reduced to the equivalent of the designated facilities. **The claim here** is for the difference in the actual outlay by the employees for lodgings and the amount allowed in reimbursement by the Carrier.

The Carrier's Submission states that its arrangement for lodging facilities reserved lodging space for the Claimants and that such reserved space "was just as much Carrier-provided as it would have been had the Carrier built and owned the buildings which housed the hotels." Thus, the Carrier contends that the arrangement complied with the Rule 37 requirement that, in the absence of an outfit car, "lodging will be provided by the **Company.**" Contrarily, the **Employees** say that, since the Claimants **used** their own funds to pay **for** the lodging and received reimbursement on **a** trailing basis, there is no merit to the Carrier's contention.

**Rule 37** refers to three alternate methods by which employees may be lodged when performing compensated service at points away from **headquarters**: (1) by an outfit car; (2) by lodging provided by the **company**; or (3) by reimbursement of expenses incurred by employees in obtaining lodging. The **rule's** use of the disjunctive "or" in reference to reimbursement of lodging expense clearly **connotes** that methods 2 and 3 are **mutually** exclusive and, consequently, if one of the methods is present, the other cannot be. Here, It **is** not disputed that the Carrier's arrangement required the employees to pay for their lodging and then to be **reimbursed therefor** on a trailing basis. This involvement of the employees' personal funds, even for **a** brief period, clearly demonstrates that method 3 was followed **in** this case which, as indicated, necessarily excludes any possibility that method 2 was present. There is nothing wrong with the Carrier making arrangements **for** reduced lodging rates, in order to reduce its costs whenever possible. However, the arrangement here **is** not remotely analogous to the provision of lodging in **a** Carrier-owned building and we conclude, on the whole record, that such arrangement did not amount to "lodging. . . provided by the Company" as such term is used in Rule 37. 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 **Employees involved** in **this** dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as appmved **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** 27th day of September, 1974.

CARRIER MEMBERS' DISSENT TO AWARD 20405 DOCKET MW-20336

(REFEREE BLACKWELL)

This is just one **more** award in a long line of clearly erroneous, biased and **prejudicial** decisions by this Referee., He states:

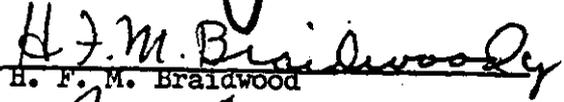
"The reason for the reduction is that the **Carrier**, by bulletin, designated certain lodging facilities as being available to the Claimants at specially reduced rates arranged by **the Carrier**; the bulletin gave notice that the use of lodging **more** expensive than those designated in the bulletin would result in the claim for lodging expense being **reduced** to the rate of the designated facilities. The Claimants did not use the designated facilities, but used **more** expensive facilities \* \* \*

In sustaining this wholly **unwarranted** claim, the Referee is, in effect, telling the Claimants that they **are** not required to comply with any of Carrier instructions - he is telling them that they can rant the Presidential suite at the **most** expensive hotel in town and his decision is that Carrier **must** pay for it. Other crafts and classes of employes on this Carrier use the facilities specified in the **bulletin** referred to by the Referee, without complaint, but the Referee feels that the three Claimants here are better than any other employes and they can thumb their noses at Carrier instructions.

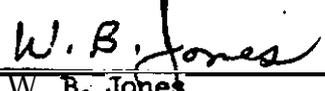
Of course, it must logically follow that such stubborn violation of Instruction, defended by this Referee, **will** certainly not be condoned by **Carrier**, but will **in** the future be treated **properly** by disciplinary measures.

The Award is clearly erroneous, **and we** must **register our most vigorous** dissent.

  
G. M. Youhn

  
H. F. M. Braidwood

  
P. C. Carter

  
W. B. Jones

  
G. L. Taylor