

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **21273**  
Docket Number MW-21050

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Southern Pacific Transportation Company  
( (Pacific **Lines**)

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

(1) The Carrier violated the Agreement when it made unauthorized deductions of \$29.40 from the earnings of

B. S. Aceves	M. Butler	<b>K. Herring</b>
P. P. <b>Andrade</b>	<b>J. G. Correa</b>	<b>P. Milazzo</b>
G. A. Arciga	<b>H. F. Hernandez</b>	<b>J. M. Rivera</b>
A. A. Avalos	<b>R. Hernandez</b>	<b>R. F. Romero</b>
M. L. Avalos	R. Herring	J. P. Salazar
		<b>J. E. Villacana</b>

for the period from February 16, 1973 through February 28, 1973 (System File **MofW 60-81**).

(2) The Carrier further violated the Agreement when it made unauthorized deductions of \$40.43 from the *earnings* of

B. S. Aceves	M. Butler	R. Herring
G. A. Arciga	J. G. Correa	K. Herring
A. A. Avalos	<b>H. F. Hernandez</b>	<b>J. M. Rivera</b>
M. L. Avalos	<b>R. Hernandez</b>	J. P. Salazar

for the period from March 1, 1973 through March 16, 1973 (System File **MofW 108-38**).

(3) The Carrier shall return to each of the claimants the **amounts** improperly deducted from their earnings as shown in Parts (1) and (2) above.

OPINION OF BOARD: Claimants employment required them to live away **from** home throughout the work week.. Carrier made unilateral arrangements with a **commissary company** to provide meals to crew members, and it deducted \$3.59 plus tax, for each day the **commissary** was open, (which it **remitted** to the commissary **company**, to pay for the meals). Claimants did not utilize the **commissary** facilities, and object to the monetary deductions from their pay checks.

Rather, the **employees** assert that they were entitled to an allowance of \$3.00 per day for meals pursuant to the Award of Arbitration Board No. 298, which was incorporated into the basic Agreement as **Article 37**:

"MEALS.--(b) **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 outfit cars, trailers or movable housing, shall be allowed meal expense as follows:

- (1) If the company provides **cooking and eating** facilities and **pays** the salary or salaries of necessary cooks, each employee shall be paid a meal **allowance** of \$1.00 per day.
- (2) If the **company** provides **cooking and eating** facilities but does not **furnish and pay** the salary or **salaries** of necessary cooks, each employee shall be paid a meal **allowance** of \$2.00 per day.
- (3) If the employer is required to obtain their meals in **restaurants or commissaries**, each employee shall be paid a meal **allowance** of \$3.00 per day.
- (4) The foregoing per diem meal allowances shall be paid for each day of the **calendar** week, including rest days and holidays, except that it shall not be payable for work days on which the employee is voluntarily absent from service, and it shall not be payable for rest days or holidays, if the employee is voluntarily absent from service when work was available to him on the **work day preceding or the work day following** said rest day or holiday. "

Carrier has urged that this board is without **jurisdiction** to determine the **dispute**; since an interpretation of the Award of Arbitration Board 298 is involved. Carrier **relies** upon Award 19704 and others, as well as certain Court **determinations**. However, although unquestionably, the agreement language had its **genesis in Award 298**, it is incorporated here **as contractual language**, and under that **circumstance**, and the basic nature of the **dispute**, we do not feel that **this Board is** divested of its obligation of **exercising its obligation to determine the dispute**. Rather, we feel that the **dispute** is properly before us for adjudication based upon the results of **Awards 19945 (citing Award 19074) and 20180**.

While it is conceded that the Carrier does **not** have a **right** to require any employee to eat in the **commissary**, nonetheless, the logical conclusion to the Carrier's assertion is that the men **were** required to support the **commissary**. While it **may** be **coincidental** that the meal allowance provided under the Agreement and the **amounts** deducted and **forwarded** to the **commissary company are similar in amount**, there is no guarantee that the **commissary payments could not be drastically increased**.

We have **considered** Award No. 19478 and feel that it speaks, to some extent, to the dispute here **in issue**. That Award concluded that **when Carrier doe6 not furnish Certain facilities specified in Paragraphs 1 and 2 of Rule 37 b, the employe shall be paid a meal allowance of \$3.00 under Paragraph 3. We do not read into that Award a capability of a Carrier diluting the contractually required payment by then deducting that, or any other amount, to forward to a commissary company.**

In **short**, we **find nothing** in Rule 3'7 b which permit6 the Carrier to designate where the **employe will eat** under Paragraph 3, when **cooking facilities** are not provided, **thus, it may not compel payment to 6 commissary company.**

**FINDINGS:** The Third **Division** of the **Adjustment Board**, upon the whole record and all the evidence, find6 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, a6 approved June **21, 1934;**

That **this Division** of the **Adjustment Board** ha6 **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: *A. W. Paulos*  
Executive **Secretary**

Dated at Chicago, **Illinois**, **this 15th day of October 1976.**