

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21840
Docket Number MW-21875

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(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 reimburse Group 2 Machine Operator Willard T. Morris for the expense of laundering bedding used in the outfit car provided for his use by the Carrier (System File P-P-250C/MW-24 9/22/75 B).

(2) The Carrier **shall** now allow and pay to Claimant Morris the sum of Eight Dollars and Fifty Cents (\$8.50) as reimbursement for the laundry expense so incurred by the **claimant** for the period May 2 through July 19, 1975.

OPINION OF BOARD: This **claim** is based upon that portion of Rule 37 which reads:

'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 work-days provided he **actually** performs compensated service on such days.'

The Carrier contends that Rule 37 does not cover any expenses other than lodging and *meals*, **and** therefore denied Claimant's requested reimbursement for the expenses of laundering of bedding and linens supplied by the Carrier for the outfit car provided **claimant**. Carrier contends there is no reference in Rule 37 to **any** expenses other **than** meals **and** lodging, which are mentioned in the first paragraph of the Rule **and** therefore, it argues, are a limitation on all other general references to 'expenses'. Carrier further points out that the last **paragraph** of Rule 37 states that Rule 38, containing specific **pro-**vision for reimbursement of laundering expenses under certain circumstances does not apply to roadway equipment operators and helpers covered by Rule 37.

It is clear to this Board that any reimbursement for laundering expenses must come from Rule 37, but the exclusion of a roadway equipment operator from receiving benefits under Rule 38 does not prevent **him from** receiving some of the **same** or similar benefits by express grant in Rule 37.

Careful examination of Rule 37 **does** not disclose any limitation on the unambiguous term "actual expenses" appearing in the second paragraph thereof. While some limitations as to reasonableness and necessity would undoubtedly be recognized, they are not at issue in the present case, the sole question being whether "actual expenses" should be construed as meaning "actual. expenses for lodging and meals".

The structure of the Rule does not clearly indicate that the initial reference to **meals and** lodging carries through to other general references to expenses, as Carrier contends. Comparing the fourth paragraph, which makes specific reference to "meals and lodging expenses" on rest days and holidays, with the second **paragraph** which provides "actual expenses" for regular work days, we can conclude that different treatment was to be accorded short **and** long stays away from headquarters. If "**actual expenses**" in the second **paragraph** was limited to meals and lodging expenses, there would be no difference between expenses on regular days and on rest days, and no need for the separate treatment given them in Rule 37.

The Carrier has pointed out that there has been no showing of a past practice allowing reimbursement under these **circumstances**. This is of no consequence as there has also been no showing of previous denials of similar claims, or inaction on the part of employees which would constitute a waiver or bar to asserting a contractual right.

In the absence of clear proof that the **language** of the **agree-**ment was not meant to be applied as written, we find that the expense of laundering bedding and linen incurred by the Claimant was reimbursable as **an** actual expense under Rule 37.

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 **Employee** within the meaning of the **Railway** Labor Act, as approved June **21, 1934**;

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That this Division of the Adjustment Board has 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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.