

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22148
Docket Number So-21990

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: { **Brotherhood of Railroad Signalmen**
 {
 { **(The Long Island Rail Road Company**

STATEMENT OF CLAIM: "claims or the **General Committee** of the **Brotherhood of Railroad Signalmen on the Long Island Rail Road:**

Claim No. 1 - Case SG-35-75

Claim on behalf of T&T Maintainer A. Shoemaker for reimbursement of \$3.00 meal expense incurred September 2, 1975.

Claim No. 2 - Case SG-36-75

Claim on behalf of T&T Maintainer P. Leonardi for reimbursement of \$2.95 meal expense incurred September 2, 1975."

OPINION OF BOARD: **Two Claimants** herein, regularly scheduled to work from 8:00 a.m. to 4:00 p.m., were directed to work from 5:00 a. m. to 4:00 p.m. -- eleven hours -- on September 2, 1975. Under Rule 19(c) claim was made for meal reimbursement, which was denied by the Carrier.

Rule 19(c) reads:

"**Employees shall not be required to work more than 10 hours without a second meal period, except in cases of emergency. The time of such second meal period and subsequent meal periods shall be not less than 30 minutes, and such time shall be paid by the Company. such meal periods shall not terminate the continuous work period. The meal periods subsequent to the second meal period shall be at intervals of four hours. Employees shall be reimbursed for the meals referred to in this paragraph (c) if the meals are not furnished by the**

Carrier defends its **position** on the basis that the additional hours, scheduled in advance, were prior to the **start** of the **bulletined** work **hours** and that **payment** for **meal reimbursement** under identical circumstances has not been paid **in the past 21 years**.

The **Organization** rests its argument on the clear **language** of the rule.

Generally accepted in numerous previous awards is the principle that past practice cannot be determinative where the **language** of the **Agreement** is clear and unequivocal. The Board finds **Rule 19(c)**, particularly as to the final sentence, does not **yield** to more than one interpretation. If the Carrier **wished** to **give** the limited interpretation to **Rule 19(c)** it sets forth in this dispute, it has had **many** opportunities in the **past** to seek to **modify** the applicable **language**.

The Board finds, therefore, that **meal reimbursement** is due under the circumstances of this dispute. Allowance must be **made**, however, for the **Carrier's** position that no **claims** have been paid for **meal** reimbursement under identical circumstances in the **past**. The **Organization** offered only a **general statement** but no specific proof to the **contrary**. The Carrier should **not be penalized** retroactively for applying its apparently unchallenged **interpretation** to the rule.

The Board will sustain the **Organization's position** as to the clear meaning of **Rule 19(c)**, requiring a **meal reimbursement** where **employees work more** than 1.0 hours, that will not require a **monetary payment** to settle this **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 approved June 21, 1934;

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

That the **Agreement** was violated.

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Claim sustained to the extent **and** in the **manner** set forth
in **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.