NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23338
Docket Number SC-23135

Arnold Ordman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

Claim on behalf of J. C. Davis for meal expense above the $9.00 limit carrier placed on daily meal allowance."
(General Chairman file: SR-63) (Carrier file: SG-347)

OPINION OF BOARD: Beginning early in 1970, signal employes formerly housed in camp cars and trailers at railroad expense were required to find housing in hotels and motels. This involved expenditures by the employes for food and lodging. Allowance has been made by Carriers for such expenditures.

The instant claim is for meal expense in excess of the $9 limit Carrier permits for daily meal allowance.

Organization asserts that under Rule 41 of the Agreement, Claimant is entitled to "actual necessary expenses" for meals and that Carrier's arbitrary limitation of $9 per day for meals, which Carrier presently permits, is violative of the Agreement.

Carrier asserts that Rule 41, revised effective February 16, 1978, has been superseded by an Award issued by Arbitration Board No. 298 on September 30, 1967. That Award requires the Carrier to give an allowance of $3 per day to an employe required to obtain his meals in a restaurant or commissary.

The current allowance of $9 a day for meals resulted from changes made by Carrier. Originally, beginning about 1970, Carrier decided, notwithstanding the limitations set forth in the Arbitration Award, to reimburse employes in full for expenses incurred in utilizing outside lodging and eating facilities. In 1974 Carrier deemed it necessary, because it felt a small percentage of employes were taking advantage of the situation, to put a $7 limit on the meal allowance. A few years later, prompted by increasing prices, Carrier increased the meal allowance to $9.

Carrier takes the position that its only obligation under the Award of Arbitration Award No. 298 is to allow $3 a day for meals, that its independent determination to grant $9 a day is a purely voluntary act, free of any contractual or arbitral requirement. Carrier asks that the claim herein be dismissed.

Organization denies that it has accepted or is bound by the Award of Arbitration Board No. 298 and insists that the only controlling criterion is Rule 41 of the Agreement which provides for reimbursement to the employes of "actual necessary expenses."

Section V of the Award did provide that where there were current agreements in effect which included provisions dealing with the types of employe benefits provided by the Award, the Organizations party to such current agreements had the option of accepting any or all of the benefits provided in the Award or continuing the benefits provided for in the agreements in lieu thereof.

As already indicated, Rule 41 of the Agreement was in effect at the time the Award issued. Nevertheless, there is written documentation establishing that Organization accepted the provision of the Award establishing the $3 meal allowance. Moreover, despite earnest and extended effort on the part of Organization, the evidence fails to support Organization's claim that it exercised its option to retain instead the benefits provided in that regard by Rule 41.

In addition, we are not persuaded in the present state of the record that Carrier's unilateral action in voluntarily enlarging the meal allowance provided by the Arbitral Award nullifies the provisions of that Award or, even more to the point, reinstates or revitalizes Rule 41. The short of the matter is that Organization has not sustained its burden.

Arbitral precedent, of course, has an impact on the decision we render here. With minor differences, largely factual, the same matters have been considered in Public Law Board No. 2004, Award No. 2 and in Public Law Board No. 2044, Award No. 2. Most recently, the issues have again been considered in Award No. 23190 (Joseph A. Sickles, Referee).

In all these instances contentions identical, or virtually identical, to those urged by Organization here, were dealt with and rejected. We share reservations suggested by, or implicit in those opinions. However, no patent error is apparent. As precedents, they are of cogent precedential value here.

The claim here must be, and is denied in its entirety.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute am respectively Carrier and Employes 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 has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day Of July 1981.