

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23552
Docket Number MW-23748

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ The Chesapeake and Ohio Railway Company
{ (Southern Region)

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

(1) The Carrier violated the Agreement when it refused to reimburse the members of Force 1166 at the rate of \$6.40 per day for lodging expenses (System File C-M-753/MG-2545).

(2) Because of the aforesaid violation, the members of Force 1166 listed below each be allowed \$6.40 per day during the period beginning on February 20, 1979 and ending on March 31, 1979.

Jackie L. Adkins
Timothy D. Atkins
Roger D. Bennett
Michael D. Crowe
Emmett B. Cyrus
Floyd C. Duncan
Larry E. Graham
Ralph A. Gwinn

Douglas R. Heath
Davie L. Johnson
David A. Martin
James E. Nutter
Mark C. Richmond
Charles C. Rononello
Larry D. Sifers
James L. Utterback

Jessie W. West"

OPINION OF BOARD: With this claim, the Organization is seeking on behalf of seventeen members of Force 1166 a \$6.40 daily lodging allowance. Its basis for requesting this payment is an alleged violation of Arbitration Award 298, that is, company cars were not available for use by the gang from April 1978 to April 17, 1979 and therefore the seventeen named Claimants are entitled to the daily lodging allowance from February 20, 1979, through April 17, 1979, a period of sixty days (which is all that is allowed as pay on a retroactive basis). The Organization also seeks payment of its claim of an alleged violation of a time limit rule, since it contends that Carrier did not respond in denying its claim within the 60 days allotted.

Carrier argues that for over a year, cars were made available to Force 1166. During this period, not one employee chose to use the cars, but instead stayed at their homes and drove their own cars to work each day. These cars were subsequently moved to another location where they were put to use. No complaint about availability of cars was raised for at least one year after they were removed from Force 1166 and sent elsewhere.

On **March 31, 1979**, a **request was** made for **company cars** for Force 1166. These cars were supplied on April 19, 1979. Carrier paid the **Organization's claim** for the period from **March 31, 1979 to April 17, 1979**, but denied the remainder. It also denied the **Organization's** claim for failing to meet the **60-day requirement** by **demonstrating** that it received the claim on **May 1, 1979**, and it responded to the claim on June 29, 1979, **which was** within **60** days of **its** receipt.

This Board has carefully reviewed the record of this **case** and is of the **opinion that Carrier has** not violated the procedural **portion of the** agreement (Rule 21-h **1A** and B), nor has it violated Rule 67 of the Schedule Agreement. **Carrier** presented evidence that it received the instant claim on May 1, 1979, and that it **responded** on June 29, 1979. **That is** within the **60** days required by Rule 21.

After **its** initial allegation on this point, the Organization failed to refute Carrier's **argument** that it did, indeed, respond to the claim in a timely manner and that the claim **was** properly before the **Board** on the merits. As to the merits of the case, Carrier relies on Third **Division** Award No. **12839**, Referee Hamilton, for **support of its position**. The Board **also** relies on **Award No. 12839** in upholding Carrier's position. **Carrier** made **company cars** available, as required, for **over one year**, but no one **used** them. **They** were removed and sent elsewhere. No one complained **about** not having cars for over a year from the time they were removed. When Carrier received a **request** for **company cars** for Force **1166**, it **immediately** proceeded to obtain cars **and** make them available.

It paid Claimants the required **\$6.40 allowance** from the day the request for cars was made until the cars were actually made available. Carrier **has** met the requirements of the agreement by this action.

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** not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting ~~Executive~~ Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.