

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27039
Docket No. MW-26558
88-3-85-3-298

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Seaboard System Railroad

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

(1) The Carrier violated the Agreement when it refused to allow Foreman Inspector R. H. Holton actual living expenses for December, 1983 (\$54.00); January, 1984 (\$75.60); February, 1984 (\$75.60); March, 1984 (\$68.40); April, 1984 (\$72.00); May, 1984 (\$79.20) and June, 1984 (\$39.60) [System File 37-SCL-84-2/12-36(84-120) E].

(2) Foreman Inspector R. H. Holton shall be reimbursed for the actual living expenses (\$464.40) he incurred during the claim period mentioned in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization maintains that Carrier violated the February 3, 1972 Memorandum of Agreement when it failed to reimburse Claimant for meals. The Memorandum specifies that the position of Foreman-Inspector "may claim daily actual living expenses." The Organization notes that after conference on August 30, 1972, the Carrier issued an office memorandum dated September 1, 1972, which stated how expenses for mileage, meals or lodging should be charged. It stated that employees "should show the actual necessary expenses incurred with respect to the items referred to above, not to exceed \$6.00 per day." Although the Claimant filed in the appropriate manner, he was not paid.

The Carrier denied the instant claim inasmuch as Claimant was assigned to a position in his home town. Carrier argues that Claimant is not entitled to reimbursement for meals or lodging when the assignment is the employee's home station. It is the Carrier's position that it has never paid for the meal expenses of any employee assigned to his home town.

This Board has carefully studied the Memorandum of Agreement. We note that it includes no language which specifies or limits reimbursement to away-from-home expenses. The Board further notes that the Memorandum does not include language indicating that payment is an automatic or assumed allowance. It is for actual expenses, "not to exceed" a stated dollar amount. The Agreement specifies "actual" expenses and by further memorandum of conference between the parties employees must "show the actual necessary expenses incurred."

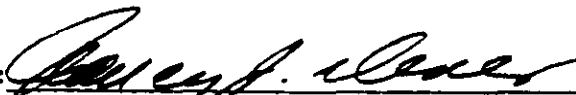
There is no evidence in this record that the Claimant actually incurred the expenses claimed for meals. Claim before this Board is for each and every daily lunch meal at the exact same cost per meal. While there can be little doubt that Claimant required food, the language of the controlling Agreement is linked to actual living expenses which are necessary in the performance of the Claimant's assignment as Foreman-Inspector. While the Organization has made a strong argument, it does not overcome the instant circumstances and language which allow expenses which are "necessary" and "actual" when assigned to construction projects, including highway projects. Meals at or from home do not fulfill the terms of the Agreement. They are not requesting reimbursement for actual expenses necessary in the performance of an assignment, but an allowance for estimated living costs incurred. Finding no evidence that Claimant's request was for actual rather than estimated expenses or that the expenses were necessary in the fulfillment of his responsibilities, the Claim must be denied (Third Division Awards 26055, 26406, 26357).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Over - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.