

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

PARTIES TO DISPUTE: ( (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former B&O)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company (B&O):

CASE NO. 1

Claim on behalf of Mr. Richard M. Shambaugh, I.D. #1512782, Leading Signalman, Force #1690, located in Hancock, W. V. Mr. Shambaugh has been working this position since May, 1985.

(a) Carrier violated the current Signalman's Agreement, particularly Appendix 'E', where it states that qualifying personnel shall receive \$4.00 per day for lodging.

(b) Carrier has not allowed this expense and should now pay Mr. Shambaugh for sixty (60) days prior to the receipt of this letter and for all days until this matter is remedied. Carrier file 2-SG-804.

CASE NO. 2

Claim on behalf of Mr. Larry D. Goff, I.D. #1510100, Leading Signalman and Mr. L. W. Weaver, I.D. #1513095, Signalman. Both Mr. Goff and Mr. Weaver are assigned to Force 1691, located in Cumberland, Maryland. They have been at this position since May 28, 1985.

(a) Carrier violated the current Signalman's Agreement, particularly Appendix 'E', where it states that qualifying personnel shall receive \$3.00 per day for meals and \$4.00 per day for lodging.

(b) Carrier should allow Mr. Goff and Mr. Weaver each a total of \$7.00 per day for all days since the 28th of May, 1985. This total should include all days until this matter has been rectified. Carrier file 2-SG-805."

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 instant Claim alleges Carrier violation of Appendix E, wherein Carrier has failed to provide allowable per diem for lodging or meals. Central to this dispute is the Board's determination of whether the employees herein were, as incorporated into the Agreement as Appendix E from Arbitration Board No. 298, either Section I or Section II employees.

Section I employees are those "employees who are employed in a type of service, the nature of which regularly required them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels ..." For those employees the Agreement holds that:

"If lodging is not furnished ... the employee shall be reimbursed for the actual reasonable expense thereof not in excess of \$4.00 per day."

and further that:

"If the employees are required to obtain their meals in restaurants or commissaries, each employee shall be paid a meal allowance of \$3.00 per day."

Section II employees continued to be covered by the Rules of the Agreement including Rule 41(e) which provided no arbitraries paid "whether or not camp cars are furnished" when hourly rated employees were assigned to other than regular maintenance forces at particular named locations, including Cumberland, Maryland. At other than specifically named headquarter locations, employees would receive \$3.00 per working day.

The Organization argues that Claimants were Section I employees. It points to Third Division Award 18596 and to Interpretation No. 12 of Award 298 distinguishing Section I employees from Section II employees. The Organization argues that Claimants were not employed at a fixed point for one year, and were clearly in the type of service contemplated by Section I.

The Carrier raised both procedural and substantive arguments in its denial of Claim. It denies any Agreement violation arguing that Claimants were clearly Section II employees reimbursed under Rule 41(a) of the Agreement.

This Board has fully reviewed the issues raised on property. The Claimants exercised seniority to positions bulletined with fixed headquarters. All positions were abolished in less than one year. A review of the record finds no probative evidence presented by the Organization to demonstrate that the type of work regularly required the Claimants to live away from home throughout their work week. There is no evidence in the record documenting the nature of the Claimants' work or clear showing that the Claimants were Section I employees. Third Division Awards 18596, 18597 and 18598 are not on

point with the instant circumstances, as they relate to signal gangs who were required by the nature of their work to live away from home. There is again, no evidence of record that the work herein performed required the Claimants to be away from their home.


This Board finds the Claim to be without merit. The record does not establish a Carrier violation. Having found no violation for lack of proof, we do not need to rule on the procedural or other substantive issues. This finding is consistent with the logic of past Awards under different circumstances (Third Division Awards 22400, 22708, Public Law Board No. 3460, Award No. 58).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.