

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Delaware and Hudson Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to reimburse System Machine Operator Raymond Callahan for the expenses he incurred while working away from home at Delanson, New York from November 1 through 30, 1984 (System Case No. 11-85).

(2) Mr. Raymond Callahan shall be allowed Three Hundred Forty-One Dollars and Four Cents (\$341.04)."

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 case before this Board is concerned with the payment of expenses in the amount of \$341.04 to Claimant for the period of November 1 through November 30, 1984.

During the month of November, 1984, Claimant was headquartered at Delanson, New York, and performed service at and from this location as a System Equipment Operator. An expense Claim for meals, lodging and driving mileage was submitted on Claimant's behalf, the Organization contending that Claimant was entitled to reimbursement for the expenses he incurred while working away from home at Delanson, New York, during November, 1984. Carrier denied the Claim in its entirety and the matter now comes before this Board.

The Organization in its Submission contends that the provisions of the April 2, 1980 System Equipment Operators' Agreement are supportive of its position. The pertinent portions of that Agreement are set forth as follows:

"Due to the present inequities of the away from home living and traveling expenses in the current Maintenance of Way Agreement, the following Agreement for away from home expenses will be in lieu of any previous or existing Agreements or provision thereof pertaining to away from home and traveling expenses to the System Equipment Operators, effective January 1, 1980:

When such payments for away from home and traveling expenses are made (i.e., when employees are required to work away from their assigned headquarters), the System Equipment Operator will be required to report to the assigned location of work at the required starting time.

A. System Equipment Operators, when required to travel from home to the work location a one-way distance of:

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|--|-----------------|
| 1. Less than ten (10) miles will receive       | \$0.00 each day |
| 2. Ten (10) miles but less than 20 miles       | 4.00 each day   |
| 3. Twenty (20) miles but less than 30 miles    | 8.00 each day   |
| 4. Thirty (30) miles-not greater than 50 miles | 12.25 each day  |

B.1. System Equipment Operators required to travel more than fifty (50) miles, one way, from home to work location, will receive actual reasonable expenses not to exceed \$15.00 each day for lodging and \$10.00 each day for meals."

According to the Organization, for approximately two years following the execution of the foregoing Agreement, employees assigned as System Equipment Operators were reimbursed in connection with filling such positions, since employees were considered as having reported directly to their machines, rather than their "headquarters" on a daily basis and were reimbursed for expenses accordingly. The Organization maintains that Carrier has now reneged on this Agreement and has failed to honor the past practice of the interpretation of the Agreement.

Carrier, on the other hand, contends that under the clear and unambiguous provisions of the expense provisions of the Agreement, an employee is entitled to expenses when required to work away from his assigned headquarters point. Since Claimant was working at Delanson, his headquarters point, he is not entitled to expenses.

The Board has carefully reviewed the language of the Agreement. Under Sections A and B.1, the parties have provided expense reimbursement when System Equipment Operators are required to travel from "home" to the "work location." There is no requirement that the work location be different or distinct from the employee's headquarter point in order to obtain reimbursement for expenses.

On the other hand, the second paragraph of the Agreement states that when "payments for away from home and traveling expenses are made (i.e., when employees are required to work away from their assigned headquarters) the System Equipment Operator will be required to report to the assigned location of work at the required starting time." (Emphasis added.)

It is the Board's view that the foregoing language is ambiguous and that the parties have presented plausible contentions for the conflicting interpretations thereof. While each of the provisions appear to be definite when read as isolated parts, there is a clear lack of harmony when the provisions are considered as a whole. The ambiguity stems from the points of travel; that is, whether employees in order to qualify for expense reimbursement must travel the requisite distance from their assigned headquarters or from their home to a work location. The Organization contends that the parties in the past have interpreted the Agreement so as to allow reimbursement when System Equipment Operators were required to travel the requisite distances to their machines, regardless of whether the machines were located at their headquarter point or another work location. Carrier has not denied that this was the practice of the parties. Accordingly, we must conclude that the parties by their own practice have established the meaning and interpretation of the ambiguous contract provisions and that credence must be given to the position taken by the Organization. Accordingly, we will rule to sustain the Claim in its entirety.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.