

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard System Railroad)

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

(1) The Carrier violated the Agreement when it failed to properly reimburse Machine Operator O. D. Lindsey for the full meal and automobile mileage expenses listed on his monthly expense reports beginning October, 1987 and continuing on a regular monthly basis [System File: 37-SCL-87-58/12(88-156)].

(2) The claim* as presented by General Chairman T. A. Denton on December 7, 1987 to Division Manager C. M. Kiefer,, Jr. shall be allowed as presented because said claim was not disallowed by Division Manager Kiefer in accordance with Rule 40.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the claim shall be allowed as presented, i.e., Mr. O. D. Lindsey shall be allowed the difference between what he was paid for monthly expenses and the full amount he should have been paid beginning October, 1987 and continuing until the violation is corrected.

* The letter of claim will be reproduced within our initial submission."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Beginning in 1983, the Claimant was assigned as a machine operator on a "Lucky" Material Handler Machine. This work required the Claimant to move with the machine throughout his assigned territory, which covered most of the state of Florida and part of Georgia. While assigned to the machine, the Claimant was lodged at motels at the Carrier's expense. He was also allowed necessary actual expenses in connection with such travel. For approximately four years after commencing this assignment, the Claimant was reimbursed for automobile mileage to and from his home on weekends, as well as for meals on Friday evening and Monday morning. In October 1987, the Carrier began to disallow the weekend mileage and any meals which were not associated with overnight lodging.

Prior to consideration of the merits of this claim, we must address a procedural objection raised by the Organization. It asserts the claim must be sustained because it was not denied at the first level of appeal by the officer to whom it was addressed. We do not agree. While Rule 40 requires claims or grievances to be presented "to the officer of the Carrier authorized to receive same," it states that "the Carrier shall...notify whoever filed the claim or grievance...of the reasons for such disallowance." The Rule does not place any limitations on who may deny a claim. This issue was discussed at length in Third Division Award 27590, which we find persuasive.

Turning to the merits, we are not satisfied that the Carrier's payment of the amounts claimed for any period of time establishes a contractual basis for continued payment. Rule 36, upon which the Organization relies, provides in part as follows:

"Employees will be reimbursed for necessary actual expenses incurred while away from their regular headquarters by direction of the Management, whether off or on their assigned territory. This Rule will not apply to employees traveling in exercise of their seniority rights nor to employees customarily carrying lunches and not being held away from their assigned territory an unreasonable time beyond the evening meal hours as provided in Rule 25."

There is no specific provision in the above Rule for the payment of mileage to and from home on weekends or for Friday evening and Monday morning meals. In fact, the record of handling of this dispute on the property suggests that a special arrangement might have been made regarding these payments. Absent an agreement between those authorized to negotiate on behalf of the Organization and the Carrier, we cannot enforce arrangements made between individual employees and their supervisors. Similarly, the General Chairman's memorandum of a telephone conversation with a Carrier official regarding the payment of meal expenses when no lodging expense is incurred does not constitute an agreement which can be enforced by this Board.

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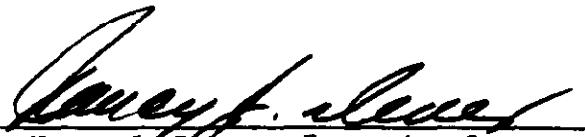
Award No. 28818
Docket No. MW-28575
91-3-88-3-409

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.