

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. former Louisville &
(Nashville Railroad Company [former Monon Railroad])

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

(1) The Agreement was violated when the Carrier failed to permit the employes assigned to B&B Gang 6K76 to eat their noon meal at their camp cars each work day beginning October 3, 1988 [System File 12(89-186) LNR].

(2) As a consequence of the aforesaid violation, the employes assigned to B&B Gang 6K76 shall each be allowed \$5.00 for each day they were not permitted to return to their camp cars for their noon meal beginning October 3, 1988 and continuing."

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.

The Organization maintains that one of Carrier's Assistant B&B Supervisors agreed to an arrangement whereby employees who are not returned to their camp cars for their midday meal would be paid \$5.00 for each occurrence. This arrangement, the Organization contends, commenced in August 1982, and was discontinued in late 1988. This arrangement, the Organization insists, cannot be unilaterally terminated by Carrier. It cites several Awards which have concluded that a practice once established remains such until it is specifically abrogated by the parties.

Carrier characterizes these payments as gratuities and acknowledges that such payments were made, however, it insists that they were done so improperly. Carrier stresses that there exist no ambiguities in the Rules

governing this dispute. The Rules clearly provide certain entitlements to employees who work out of camp cars and are regularly required to live away from home. These Rules do not entitle them to payment of an additional \$5.00 for each occasion that they are not returned to the camp car site for their noon meal. Carrier insists that the gratuities that were paid resulted from an arrangement made by persons unauthorized to effectuate changes in the working Agreement and, as such, were not binding and could be discontinued at will by either party. In support of its arguments it cites a number of Awards which hold that gratuitous practices providing payments beyond those required by Agreement terms do not become an established custom which could not be discontinued at any time.

The arrangement of paying \$5.00 to employees who were not returned to their camp cars for their noon meal was only in place for approximately six years. It only occurred on one Division of the Carrier. The frequency of occurrences has not been established in this record. Thus, it is questionable if the payments could be characterized as long-standing. However, even if such payments were to be characterized as long-standing, the Rules covering payments for meal allowances, etc., when working out of camp cars, are clear and unambiguous. Accordingly, they are not subject to interpretation on the basis of the parties' practices. (See Third Division Award 28034).

Additionally, the arrangement for payment was entered into by a representative of the Carrier who lacked authority to enlarge, amend or modify existing Agreements. In such situations this Board has held that carriers are not bound to continue unauthorized and erroneous past payments made improperly by subordinate officials. (See Second Division Award 9049).

The Claim is without merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.