

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33231
Docket No. MW-32235
99-3-95-3-41**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Mr. K. J. McConnell to perform his customarily assigned duties of preparing and providing meals for Rail Gang 143 on August 8, 1993 (System Docket MW-3186).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. J. McConnell shall be allowed twelve (12) hours' pay at the camp car cooks' time and one-half rate.”

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 employee 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 were given due notice of hearing thereon.

At all material times herein the Claimant was assigned as Camp Cook for Rail Gang #143. As such he, and other Camp Cooks as well, were ordinarily required to

work either one hour before or one hour after the rest of the gang in order to prepare breakfast or dinner for the gang. On August 8, 1993, a rest day for the entire gang, a portion of the gang was called out to perform overtime work. However, the gang ate all of their meals that day at a local restaurant.

The Organization contends that under the seniority provisions of the parties' Agreement and ordinary practice the work of preparing and serving camp meals belongs to the Camp Cooks and that when the meals on the day in question were performed by individuals outside the bargaining unit the Claimant's seniority right to overtime pay was violated. In addition, the Organization contends that by permitting the local restaurant to serve the gang its meals that day the Carrier violated the parties' Scope provision in the Agreement because it contracted out work without first notifying the Organization.

The Carrier on the other hand argues that because the parties have negotiated Rule 24 to specifically govern the manner in which the meals of rail gangs will be provided meals that Rule controls and that it complied with that provision. With regard to the issue of notice for contracting out, the Carrier asserts that no such contract was let.

A review of Rule 24 reveals that under its provisions the Carrier may elect to provide meals by either the use of camp cars, a Commissary Company, or a suitable restaurant. The Rule then goes on to provide specific obligations for the payment of overtime pay to Camp Cooks when the Carrier opts to use either of the first two choices. Finally, the Rule also provides that Camp Cooks "... are not entitled to ... overtime ... simply because some of the gang may work after regular hours ... unless these Camp Cooks ... are in fact required to be on duty and perform service."

There can be no question that when Rule 24 is contrasted with the seniority provisions in conjunction with Rule 17 one is led to the inescapable conclusion that the former is a specific provision. Moreover, it is a specific provision not only with regard to the manner in which meals may be provided to rail gangs, but also with regard to the manner in which Camp Cooks will be paid overtime in the event that the Carrier opts to provide meals in some fashion other than at a restaurant. Thus, and in keeping with long-standing arbitral precedent both in and outside of the railroad industry, a specific provision controls over those that are general in nature because the former better reflects the parties' mutual intent with regard to the exact issue presented.

Despite this conclusion the Organization still argues that there has been a violation of Rule 24 because, in its view, once the Carrier elects one of the three choices allowed in the Rule, it may not choose another. However, there is nothing in the Rule that explicitly allows for such a conclusion. In the alternative, the Organization contends that we must reach the conclusion that the Carrier is limited to the first choice that it makes because if we do not, the word "elect" in the Rule is rendered meaningless. Again, we disagree. To conclude as we do that the Carrier is not obligated to continue using the form of providing meals that it has once chosen still gives meaning to the word "elect" for under those circumstances it means that the Carrier is restricted to the choices listed in the Rule. Thus, if the Carrier chooses to use Camp Cooks on one occasion and to use a restaurant on another, it has made an election.

The remaining issue is whether the Carrier violated the parties' Scope Rule when it did not inform the Organization that it was going to have the rail gang eat at a local restaurant. Again, reliance on the express and clear language of the provisions governs this dispute. There the Agreement requires that the Carrier give notice when it plans to contract out work. The record clearly reflects that no such contract was let between the Carrier and the local restaurant. Moreover, to the extent that the interaction between the two on the day in question could be regarded as contracting out, it is clearly de minimis.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of April 1999.