Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 34207
Docket No. SG-35251
00-3-99-3-120

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of R. J. Parker, for payment of his expenses as submitted for the months of January and February of 1997, (a total of $38.60) account Carrier violated the current Signalmen's Agreement, particularly Rules 12 and 34, when it refused to reimburse the Claimant for his actual living expenses. Carrier's File No. 1080507. General Chairman's File No. 761225360. BRS File Case No. 10929-UP."

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.

The Claimant, a Signalman, held seniority on Roster 6, Western Region (Salt Lake City and North). During the relevant period in 1997, the Claimant was not

working on Roster 6, but was working on Roster 7 at Hood River, Oregon. The Claimant sought reimbursement in the amount of $38.60 for laundry expenses incurred while working outside his seniority district in January and February 1997. The Carrier declined to make that reimbursement. This claim followed. The record reveals that the parties held several other similar claims in abeyance pending outcome of this dispute.

The relevant rules provide:

"RULE 12 - ROAD SERVICE

(b) Hourly-rated employees sent from home station to perform work and who do not return to home station the same day will be allowed time for traveling or waiting in accordance with Section (c) of this rule. All hours worked will be paid for, straight time for regularly established work period and at the overtime rate for overtime hours. Actual living expenses will be allowed while away from home station if meals and lodging are not provided by the Company or camp cars to which such employes are assigned are not available.

* * *

RULE 34 - TEMPORARY TRANSFER - OTHER SENIORITY DISTRICTS

Employes temporarily transferred by direction of the Management from one seniority district to another will retain their seniority rights on the district from which transferred and will be allowed actual expenses while off their seniority district. Except for temporary service, employes will not be transferred to another district without their consent."

Focusing upon the requirement in Rule 12(b) that "[a]ctual living expenses will be allowed while away from home station . . ." and the further requirement in Rule 34 that employees ". . . will be allowed actual expenses while off their seniority district," the Organization argues that the Claimant's laundry expenses should be paid. The Carrier argues that actual expenses are confined to meals and lodging.

The burden in this case is on the Organization to demonstrate a violation of the Agreement. That burden has not been met.

The initial question in any contract interpretation dispute is whether clear contract language exists to resolve the matter. Because the burden is on the Organization, the Organization is therefore obligated to demonstrate clear language to support its claim that the Claimant is entitled to reimbursement for laundry expenses.

The relevant language is not clear. Rule 12 states that "[a]ctual living expenses *will be allowed while away from home station. . . .*" *At first reading, it is reasonable to* conclude, consistent with the Organization's position, that laundry expenses are part of "[a]ctual living expenses." However, the remainder of the relevant sentence in Rule 12 qualifies the receipt of "[a]ctual living expenses" by the phrase "if meals and lodging are not provided by the Company or camp cars to which such employes are assigned are not available" [emphasis added]. Therefore, another reasonable interpretation of the sentence is, consistent with the Carrier's position, that "[a]cutal living expenses" is limited to "meals and lodging." Unless the parties intended to limit "[a]ctual living expenses" to "meals and lodging," why would the parties qualify the receipt of "[a]ctual living expenses" upon the receipt of "meals and lodging?" The point here is that a reading of Rule 12 yields conflicting plausible interpretations. Where language yields conflicting but plausible interpretations, the language is ambiguous.

Consideration of the language in Rule 34 does not clear anything up. Read by itself, Rule 34's language concerning the receipt of "actual expenses" does not have the qualification of receipt of "meals and lodging" because the phrase "meals and lodging" is absent from that Rule. Under a plain reading of Rule 34, the Organization's argument is therefore supported. However, contracts are to be read as a whole. Indeed, as specified in the claim, the Organization relies upon Rules 12 and 34. Reading those two provisions together, why would the parties mean something broader in Rule 34 than they did in Rule 12? Is there a difference between "[a]ctual living expenses" in Rule 12 and "actual expenses" in Rule 34? Why should there be a difference if the design of these sections is to compensate employees who must incur expenses as a result of being on the road or working in other seniority districts? When read together, Rules 12 and 34 yield two plausible interpretations. Again, the language is therefore ambiguous.

On the property, the Organization produced evidence that the July 1992 laundry expenses of another Signalman were approved and paid. The Carrier replied that such

payment was an "aberration from policy" pointing out that the approval came from a fellow covered employee. One of the strongest tools for interpreting ambiguous contract language is past practice. Because the burden is on the Organization to support its interpretation, the Organization must show the existence of a claimed past practice. The Organization has not done that.

To be a past practice, the conditions in dispute must be unequivocal, clearly enunciated and acted upon and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. One incident of payment which occurred some four and one-half years prior to this dispute does not rise to the necessary level of proof of past practice. If anything, the lack of evidence of other payments for laundry expenses for similarly situated employees strongly leads to a conclusion that the past practice was not to make such payments.

Therefore, based upon the traditional tools used for analyzing contract language, we cannot say that the Organization carried its burden. At best, the relevant language is ambiguous. However, ambiguous language does not support the Organization's burden to demonstrate that the language required payment for laundry expenses.

Based on the above reasons, the Organization's burden has not been met. Further, based on the above, the Carrier's argument that the Claimant received a per diem payment which covered laundry expenses (which is contested by the Organization) is moot.

The claim shall be denied.

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 23rd day of August, 2000.