

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34994
Docket No. MW-31049
00-3-92-3-907**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range 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 properly adjust meal and lodging allowance provisions as provided in Rule 25 (a) and to compensate all of the affected employees accordingly, beginning July 29, 1991 and continuing (Claim No. 18-91).**
- (2) As a consequence of the violation referred to in Part (1) above, meal and lodging allowances shall be adjusted in compliance with the Agreement and Award No. 298 as amended effective July 29, 1991, and all affected employees shall be compensated for the difference in what they were paid for daily meal and lodging allowances and what they were entitled to receive, in accordance therewith, beginning July 29, 1991 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 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.

This case involves a claim by the Organization that the Carrier violated Rule 25-I (A) of the Agreement between the parties when it failed to implement daily meal and lodging allowance increases required under Article V of the new National Agreement effective July 29, 1991. The Carrier maintains that it did not participate in the National settlement, and therefore was not bound by the increases. According to the Carrier, it properly raised the daily meal and lodging allowance when its local settlement became effective on October 5, 1992.

The relevant portion of Rule 25 of the Agreement between the Carrier and the Organization provides as follows:

“Rule 25

Travel and Expense

I. The Railroad Company shall provide for employees who are employed in a type of service the nature of which regularly requires them throughout their workweek to live away from home in camp cars, camps, highway travelers, hotels or motels as follows:

- A. The Company will not furnish lodging, cooking or eating facilities. In lieu thereof, each employee will be paid a daily allowance equal to one-half the daily meal and lodging allowance payable under Arbitration Award No. 298, as amended. This will be paid as a daily allowance regardless of whether such expenses are actually incurred.”**

* * *

The Organization insists that the Carrier, by promising under the express terms of Rule 25 to pay daily meal and lodging allowances based on Award No. 298 “as amended,” has agreed to be bound by all future increases in such allowances

negotiated by any National settlement, even if the Carrier properly provided notice of its intention to negotiate locally. Accordingly, even though the Carrier did not take part in the 1991 National negotiations, the Organization maintains that the allowances due under Rule 25 should have been adjusted upward on July 29, 1991 when increases in the allowances specified in Award No. 298 became effective as part of the new National Agreement.

The Carrier, on the other hand, argues that compensation due under Rule 25 remained fixed by Section 6 of the Railway Labor Act until modified by local negotiations. The Carrier asserts that because it did not participate in National negotiations, but negotiated locally, it was not bound by the amendments to Award No. 298 incorporated into the National settlement. According to the Carrier, the term “as amended” in Rule 25-I(A) refers to changes in Award No. 298 that had been made as of the date Rule 25 was adopted, as well as any modifications of Award No. 298 that might be negotiated between the Carrier and the Organization. The Carrier insists that Rule 25 does not bind it to changes in Award No. 298 negotiated by persons not authorized to represent the Carrier’s interests.

After reviewing the record evidence, we conclude that the claim should be denied. We are not persuaded on this record that the term “as amended” signified the Carrier’s agreement to be bound by amendments to Award No. 298 negotiated in a National settlement in which it had not participated or to which it had not agreed to be bound. Rather, the term merely incorporates all amendments to Award No. 298 as of the effective date of the Schedule Agreement. Any subsequent increase in the meal and lodging allowance would have to be negotiated by the parties. In the absence of clear evidence of an agreement by the Carrier to be bound prospectively by changes to Award No. 298 negotiated by others, the claim must be denied.

AWARD

Claim denied.

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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 20th day of September, 2000.