

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37878
Docket No. SG-37717
06-3-03-3-67

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of S. Chapman, J. L. Faver, B. J. Ferguson and T. S. Morgan, for reimbursement of expenses submitted by the Claimants and denied by Carrier for the period of October 1, 2001 to November 1, 2001, account Carrier violated the current Signalmen's Agreement, particularly Rule 46, when it improperly denied paying meal expenses to the Claimants for their actual necessary expenses while working away from their homes. Carrier's File No. 35 02 0014. General Chairman's File No. 01-136-BNSF-133-T, BRS File Case No. 12457-BNSF.”

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 facts in this case are not disputed. The Claimants were members of Mobile Construction Crew 26044. The headquarters point established for this crew was Wichita Falls, Texas. The Claimants were provided lodging at Vernon, Texas. They elected not to accept the Carrier's lodging, but instead traveled to and from their place of residence, a distance of about 77 miles. From October 1 through November 1, 2001 the Claimants submitted for breakfast and dinner meal expenses.

This is a contract interpretation case involving Part 1 of Rule 46(D) of the Agreement, which reads as follows:

"Employees assigned to mobile crews working away from their homes will be reimbursed for their necessary actual expenses for meals and for necessary actual expenses for lodging, if lodging is not provided by the Carrier."

The Carrier denied the claim as these were not "necessary actual expenses." It maintained that for the expense to be reimbursed, it must be both an actual expense and a necessary expense. The Carrier argues that electing to commute to and from their homes negated the necessity for the expenses.

The Organization argues that Rule 46 is a mobile crew Rule requiring pay for all meal and lodging expenses. It points to Rule 47 (A) that "... employees shall not be reimbursed for costs of meals and lodging at headquarters point." It argues that Rule 46, supra, requires payment when members of a mobile crew are "working away from their homes" as was the case at bar. The fact that the Claimants refused to accept lodging is irrelevant to meal expenses. The Claimants traveled to and from their homes to their work areas and they were due expenses for meals. The Organization maintains that such payments have been historically and traditionally paid.

The Board carefully reviewed the facts of this case. The language of the Rule is clear and unambiguous. The phrase "working away from their homes" does not refer, as the Organization argues, to the Claimants' homes. To work away from

home refers to an employment situation wherein the employee is forced by job requirements to sleep at a location "away from their homes."

The disputed Rule is clear and unambiguous. There is insufficient evidence of record to persuasively support a past practice and overcome the clear language of the Rule. The Claimants were working near their homes and elected to return to their homes. This is not a condition requisite for "necessary actual expenses" for meals. The claim must 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 1st day of August 2006.