

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 39004  
Docket No. SG-38448  
08-3-NRAB-00003-040416  
(04-3-416)

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Baltimore & Ohio):

Claim on behalf of C. M. Kreuzer, for the daily meal per diem of \$37.89 for each day of the work week May 12 through May 16, 2003, account Carrier violated the current Signalman's Agreement, particularly CSXT Labor Agreement 15-18-94, when Carrier held him off a system job which was awarded in error to another employee. Carrier's File No. 15(03-00092). General Chairman's File No. TI-01-09-03. BRS File Case No. 12985-B&O.”

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 Organization filed the instant claim based on the contention the Carrier violated the Agreement when it failed to pay a per diem meal allowance to the Claimant when it erroneously held the Claimant off of a system job that was incorrectly awarded to another employee.

The Organization contends that the Carrier erroneously withheld the Claimant from his new assignment from May 12 to May 16, 2003. It acknowledges that the Carrier properly compensated the Claimant for his lost earnings, his 30-minute arbitrary, and his travel allowance for not being transferred to his new assignment in accordance with Rule 47(7)d, but it failed to properly compensate the Claimant for the per diem allowance outlined in CSXT Labor Agreement No. 15-18-94. The Organization asserts that the per diem is as much a part of a system gang employee's compensation as the 30-minute arbitrary and the travel allowance.

Addressing the Carrier's assertion that the per diem meal allowance is a form of reimbursement for expenses incurred, the Organization argues that the Claimant should have been working the position, but the Carrier deprived him of that opportunity when it erroneously awarded the position to the wrong person. The Agreement provides that system gang members will be paid per diem for each day worked. The Organization points out that that these employees do not have to show that expenses have been incurred in order to receive per diem. All that is required to receive per diem is that the employee be a member of the system gang and work the day(s) claimed.

The Organization maintains that the Claimant was entitled to additional per diem compensation because had the Claimant been transferred to his new assignment, he would have earned this additional money. The Organization insists that the Claimant is entitled to the per diem in question for each day of his workweek as a result of being withheld from his new assignment from May 12 through May 16, 2003.

The Carrier initially contends that the Organization failed to prove that Rule 47 was violated. It asserts that nothing in Rule 47 or CSXT Labor Agreement No. 15-18-94 allows an employee to be reimbursed for expenses not incurred.

The Carrier points out that the intent of the governing Rule is to ensure that an employee suffers no loss in wages if management does not transfer the employee to a new assignment within five days after the effective date of the assignment bulletin.

The Carrier argues that the Claimant was compensated as much, or more, than he would have been compensated on the Signalman's position. It asserts that during the time period in question, the Claimant earned more wages on his old job than he would have earned on his new assignment. The Carrier further argues that the Claimant was not financially impacted in a negative manner during the period set forth in the claim. On the contrary, the Claimant was paid a higher hourly rate on his former position than his bid-in position, and there is no evidence that the Claimant would have performed any overtime during the period in question. The Carrier therefore asserts that the Organization failed to prove that the Carrier violated Rule 47.

The Carrier goes on to contend that there is no basis for the Organization's argument that the Carrier pay the Claimant per diem while he was working on a Maintainer's job that had a fixed headquarters and did not necessitate expenses. The Carrier emphasizes that CSXT Labor Agreement No. 15-18-94 sets forth the requirements for employees to receive the per diem allowance and weekend travel allowances. The Carrier argues that the Claimant did not meet these requirements during the period at issue because the Claimant did not hold a position that necessitated him to incur expenses. Citing several Awards, the Carrier insists that the Claimant is not entitled to per diem or any other reimbursable expenses.

The Carrier emphasizes that there is no evidence to support the instant claim. The Organization presented only assertions and allegations, none of which disputed the fact that the Claimant did not hold a position that necessitated expenses and/or travel allowances. The Carrier asserts that it complied with Rule 47, and the

Organization failed to prove otherwise. The Carrier points out that the Board has denied other such cases that were based on nothing but conjecture.

The Carrier argues that the Claimant is not contractually entitled to any additional compensation. It ultimately contends that the instant claim should be denied in its entirety.

The Board's review of the record reveals that the Organization failed to meet its burden of proof that the Claimant was entitled to a daily meal allowance during the period in question. The record demonstrates that the Claimant did not hold a position that necessitated him to be on expenses and, consequently, he was not entitled to per diem or any other type of reimbursable expenses. This decision is backed up by both the language of the Agreement, as well as a number of Board decisions on this issue. (See Third Division Award 38085, which held that the Claimant was not entitled to a meal allowance because he was not actually working on a position to which such allowances would have attached. See also Third Division Awards 37612, 37614, and 37615.)

For all of the above reasons, this 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 27th day of March 2008.