

Award No. 1231  
Docket No. MW-1343

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Ernest M. Tipton, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
CHICAGO, BURLINGTON AND QUINCY RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** "Claim of C. D. Sypolt, bridge and building mechanic, Sterling Division, based upon the application of Schedule Rule 54, asking that he be reimbursed for expenses incurred while away from his regular outfit by direction of the Management, from August 4th to 31st, 1939, inclusive."

**EMPLOYES' STATEMENT OF FACTS:** "Effective as of August 4th, 1939, B. & B. mechanic, C. D. Sypolt, was taken off the regular B. & B. gang on which he was employed and instructed and assigned to inspect bridge pilings over the division, continuing in the assignment until August 31, 1939. While working in that assignment, C. D. Sypolt was paid as an Assistant B. & B. Foreman. A B. & B. laborer was assigned to assist him. While thus detached from his regular outfit, Sypolt and the laborer assisting him, were furnished with an outfit car."

**POSITION OF EMPLOYES:** "As stated in Employees' Statement of Facts, B. & B. mechanic, C. D. Sypolt was taken off the regular gang to which he was assigned, and instructed to work over the division, inspecting pilings. Being detached from his regular gang and his regular outfit, he and the laborer assisting him were furnished with one outfit car, which, by the way, was in a rather poor condition."

"Rule 54 of Agreement in effect reads:

'Employees will be reimbursed for cost of meals and lodgings incurred while away from their regular outfits or regular headquarters by direction of the Management, whether off or on their assigned territory. This rule not to apply to midday lunch customarily carried by employees, nor to employees traveling in exercise of their seniority rights.'

"Attention should be given to the language of the rule: 'Employees will be reimbursed for cost of meals and lodgings incurred while away from their regular outfits or regular headquarters, by the direction of the Management,' (underscoring ours)."

"We maintain that one outfit car furnished to an employee or a number of employees segregated from their regular gang is not a regular outfit. The B. & B. outfit from which Sypolt was taken, was a regular outfit. That outfit, in addition to being equipped with bunks for sleeping accommodations of

for three days exclusive of Sunday the 20th, and he could have very easily and readily gotten in communication with the Division officers and made his protest regarding the condition of the car or its alleged lack of equipment, but instead of doing so he waited until seven days after the assignment was completed (Exhibit 1). Incidentally, nothing wrong was found with the outfit car he had used, and the car has since been used by other employes without complaint.

"Sypolt inspected piling between Eustis, Nebraska and Carpenter, Wyoming, and although the weather may have been warm during August over part of this territory, he would have experienced the same and probably warmer weather conditions had he remained with Foreman Walburn's gang or been employed on any other gang, all of whom found no difficulty in preparing their own meals in their outfit cars. Furthermore, as Sypolt, and his helper used the car to sleep in it is evident that it was in good sanitary condition.

"The truth is that as his outfit car was occupied only by himself and one helper, Sypolt found it more convenient and less troublesome, and undoubtedly no more expensive, to buy his meals rather than buy groceries, etc. and prepare his own meals.

"In Rule 59 the Management has agreed that 'The railroad will furnish an adequate supply of water suitable for domestic uses to employes living in its buildings, camps and outfit cars. . . . Present practice with respect to furnishing company ice will be continued.'

"It is not mandatory under the rule that employes prepare their own meals in the outfit cars, but where the Management provides an outfit car in first class sanitary condition, with water, ice, etc., it is entirely optional with the foreman and his men to prepare their own meals or buy them.

"The Committee bases its claim on Rule 54, reading:

'Employes will be reimbursed for cost of meals and lodging incurred while away from their regular outfits or regular headquarters by direction of the Management, whether off or on their assigned territory. This rule not to apply to midday lunch customarily carried by employes, nor to employes traveling in exercise of their seniority rights.'

"The car assigned to Sypolt was his 'regular outfit' or his 'headquarters' as provided in Rule 54, and Sypolt was not 'away from their regular outfit or headquarters'; therefore, under Rule 54, the Management is no more obligated to pay for his meals than if he had been in his home and his wife had said, 'It's too much bother to cook, let's go out for dinner.'

"Sypolt's assignment was entirely separate from Foreman Walburn's assignment, and Sypolt did not report to or receive instructions from Foreman Walburn, nor was Foreman Walburn in any manner responsible for the work performed by Sypolt from August 4th to 31st, inclusive. Consequently, Foreman Walburn's regular outfit car was not Sypolt's 'regular outfit or regular headquarters' during the time he was working on another assignment entirely beyond the supervision and jurisdiction of Foreman Walburn. The only 'regular outfit' Sypolt had between August 4th and 31st, inclusive, was the outfit car assigned to him and which he occupied during that period.

"It is the position of the Management that the claim is without merit and should be declined."

**OPINION OF BOARD:** This is a claim for meals, while the claimant, a bridge and building mechanic, was inspecting bridge pilings over a division (Sterling Division) from a period beginning August 4, 1939, to and including August 31, 1939. While performing this work he and the laborer assisting him were furnished an outfit car in which they slept. There is no claim for lodgings.

The claim is based upon Rule 54, which reads:

"Rule 54. Employees will be reimbursed for cost of meals and lodgings incurred while away from their regular outfits or regular headquarters by direction of the Management, whether off or on their assigned territory. This rule not to apply to midday lunch customarily carried by employees, nor to employees traveling in exercise of their seniority rights."

The claimant contends that the outfit car was not equipped so that meals could be prepared therein; on the other hand, the Carrier contends that it was. The Board is of the opinion that it is immaterial whether it was so equipped or not.

The record shows that prior to August 4, 1939, this claimant was a regular assigned bridge and building employe in a regular bridge and building crew. The Board is of the opinion that the work he did during the period comprising this claim was such that took him temporarily away from his regular "outfit." It was not a new assignment.

The claimant was familiar with Rule 54. Under such circumstances there was no reason for him to complain that the car furnished him was not properly equipped to cook his own meals.

Rules 58 and 59 have no bearing on this claim.

It therefore follows that the claim for meals should be sustained.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim for meals from August 4, 1939, to August 31, 1939, is sustained.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 14th day of November, 1940.