

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD

STATEMENT OF CLAIM: "Request of Signalmen R. V. Mouser, C. E. Hughes, C. H. Fickle, George Wasson and Thomas Runda, et al., employees of Regional Telegraph and Signal Gang, for reimbursement of cost of noon-day lunch on June 16, 17, 18, 20, 21, 22, 23, 24, 25 and August 10, 1938, and all subsequent days that they were not permitted to return to their headquarters (camp cars) for that meal."

EMPLOYEES' STATEMENT OF FACTS: "Claimants are members of a regional telegraph and signal gang assigned with headquarters in camp cars."

"On June 16, 17, and 18, 20, 21, 22, 23, 24 and 25, 1938, R. V. Mouser was not permitted to return to the camp cars for lunch, while on August 10, 1938 all of the above named employees were not permitted to return to the camp cars for lunch. In both cases they were directed by the carrier to work at points away from their headquarters and were required to either carry their lunch or to otherwise provide for it, because of the distance away from their headquarters."

"It is the practice, in the operation of such gangs, for the company to furnish the camp cars and equipment and to employ cooks. The members of the gangs pay their pro rata share of the cost of the meals."

POSITION OF EMPLOYEES: "For many years the practice of using camp car gangs for the performance of certain work in the telegraph and signal department has been followed, and particularly so with respect to line work as assigned to these employees; however, prior to September 1, 1931 there were, in addition to the regional camp car gangs, a few employees assigned to this work who were known as hotel gangs. These employees were not assigned to camp cars as their headquarters but were instructed to stop at hotels in cities or towns near their work, and the company paid all expenses in addition to their regular salaries."

"Prior to September 1, 1931, none of the employees of the regional gangs were ever held away from their assigned headquarters at lunch time or required to eat elsewhere without the payment of the expense of the meal by the carrier."

"Effective September 1, 1931, the so-called regional line gangs were abolished, as were practically all division signal gangs. At this time an understanding was negotiated with a committee representing the employees whereby

'An hourly rated employe sent from home station to perform work and who does not return to home station daily.' (Emphasis supplied.) Furthermore, it has been shown that the preceding provisions of Regulation 4-K-1 apply to such an employe and are not applicable to an hourly rated employe sent from his home station who does return to it daily. It is therefore, evident that the sentence in question is intended to apply to an employe who does not return to his home station daily and that nothing in the Regulation indicated that this provision is applicable to any other employe.

"That the provision last quoted is applicable only to hourly rated employes who do not return to their home station daily, and is not applicable to the Claimants, is further demonstrated by the last sentence of Regulation 4-K-1:

'This employe will not be subject to the provisions of Regulation 4-B-2.'

"The use of the term 'This employe,' which can refer only to 'An hourly rated employe * * * who does not return to home station daily,' in the concluding provision of the Regulation shows beyond question that all the provisions of Regulation 4-K-1 relate solely to such an employe, and that none of the provisions can be applied to employes such as the Claimants in the instant case.

"No part of Regulation 4-K-1, therefore, furnished any support for the claim presented in the instant case.

"IV. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

"The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of 'grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.' The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employe in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

"V. The Claimants Are Not Entitled Under the Agreement to the Re-imbursement Claimed.

"Therefore in view of the existence of an Agreement governing the rules, rates of pay and working conditions of the Claimants, and in view of the fact that this Agreement does not require the Carrier to pay the cost of the noon-day meal of employes who leave and return to their home station daily, it is respectfully submitted that the Claimants are not entitled to be paid the cost of their noon-day meal on August 10, 1938, and that your Honorable Board should dismiss the claim of the employes in this matter.

"All data contained herein, in so far as it pertains to the claim for August 10, 1938, have been presented to the employes involved or to their duly authorized representative.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all the same."

OPINION OF BOARD: The record in this case shows that the Carrier did not permit the employes involved, who are assigned to camp cars, to return to their cars for their noon-day lunch, instructing that they take their noon-

day lunch with them when leaving their camp cars at their regular starting time at 7:00 o'clock in the morning; but the employees involved were returned to these camp cars at the end of each day's work.

The Carrier has stated it has been the practice and, in fact, recognizes the desirability of the employees assigned to camp cars returning thereto for their regular noon-day lunch; however, it contends that the rules of the agreement do not compel this to be done and that under the rules it is privileged to require the employees to take their lunch with them.

The employees contend on the other hand that the rules of the agreement require the employees assigned to camp cars to be permitted to eat their noon-day lunch in the camp car provided for that purpose and that, when not permitted to do so, the Carrier is required to pay the expenses of the meal they are not permitted to eat at the camp car.

Rule 4-L-1 reads:

"Boarding cars will be the home station, as referred to in these regulations, for employees assigned to such cars."

The other two rules primarily involved in this claim are Rules 4-J-1 and 4-K-1.

Rule 4-J-1 reads:

"Hourly-rated employees performing service requiring them to leave and return to home station daily will be paid continuous time exclusive of meal period, from time reporting for duty until released at home station. Straight time for all straight-time work. Overtime for all overtime work. Straight time for all time traveling or waiting."

while Rule 4-K-1 reads:

"An hourly rated employee sent from home station to perform work and who does not return to home station daily, when traveling by direction of the management and not in boarding car, will be allowed actual time for traveling or waiting during regular work period. Half pro-rata rate for time not to exceed eight (8) hours, exclusive of meal periods, and actual expenses will be allowed for traveling or waiting outside of regular work periods when sleeping car accommodations are not available. Actual expenses but no time will be allowed for traveling or waiting outside of regular work periods when sleeping car accommodations are available. All hours worked will be paid for in accordance with Regulation 4-C-1. Actual expenses will be allowed at the point to which sent if meals and lodging are not provided by the railroad or boarding cars to which employees are assigned are not available. This employee will not be subject to the provisions of Regulation 4-B-2."

The record shows that the employees herein involved were hourly-rated employees who left their boarding cars at 7:00 A. M. and were returned to these boarding cars at 4:00 P. M. on the days involved. Under Rule 4-L-1 these boarding cars were their home station. As these employees were returned to their home station daily they were working under Rule 4-J-1.

The Board is of the opinion that these employees were not under the provisions of Rule 4-K-1 because of the fact that they were returned to their home station daily. Rule 4-K-1 expressly applies only to employees "sent from home station to perform work and who does not return to home station daily." (Emphasis ours.)

The employees especially rely upon the following sentence of Rule 4-K-1, which reads:

"Actual expenses will be allowed at the point to which sent if meals and lodging are not provided by the railroad or boarding cars to which employees are assigned are not available."

The question arises what "employees" are referred to as used in that sentence of Rule 4-K-1? The word "employees" must refer to the first sentence of that rule which are employees who do "not return to home station daily." It therefore follows that the employees herein involved do not come within the provisions of Rule 4-K-1, and their claim is without merit.

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 employees involved in this dispute are respectively carrier and employees 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 there is no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1940.