

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE TEXAS & PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Fred Bishop, W. B. Lamar, and L. R. Stover, B & B mechanics, shall be reimbursed for expenses incurred for meals when working at points away from the regular headquarters of the bridge and building gang in which they were employed, retroactive to April 1, 1943.

EMPLOYEES' STATEMENT OF FACTS: The claimants, B&B Mechanics Fred Bishop, W. B. Lamar, and L. R. Stover, are employed in bridge and building gang No. 8, Western Division, extending from Fort Worth to El Paso. This B & B gang No. 8 was organized at El Paso, Texas in the spring of 1942; Foreman C. O. Loyd being assigned by bulletin. No outfit cars in which members of the gang could lodge or procure their meals were provided at the time the gang was organized and have not been furnished at any time since. When B & B gang No. 8 was organized at El Paso in the spring of 1942, mechanics and helpers who lived at El Paso were hired by Foreman Loyd to make up the gang. The gang worked at El Paso for a considerable time after it was organized. Foreman Loyd was paid by the Carrier for expenses incurred while working at El Paso and has been reimbursed for expenses incurred while working at various points on the division ever since. Mechanics and helpers residing at El Paso lodged and took their meals at their homes, thus incurring no expenses.

After having completed the work at El Paso, gang No. 8 without outfit cars was moved east and was finally assigned at Aledo, Texas, a point located approximately fifteen miles west of Fort Worth. When the gang was moved away from El Paso, all of the men who, as stated, lived at El Paso quit the service. When gang No. 8 was assigned at Aledo, Foreman Loyd hired Bishop, Lamar, and Stover who live and maintain families at Millsap, Texas, a point located approximately twenty-five miles west of Aledo. After completing the work at Aledo, B&B gang No. 8 was moved from point to point on the Western Division, and approximately July 1, 1944 was moved to Baird, Texas, working at that point until approximately November 1, 1944. While working at Baird and other points, members of gang No. 8 were provided with a portable hut in which they lodged. It was necessary, however, for them to eat their meals in restaurants at all points where the gang was located and where they worked.

Agreements effective November 16, 1937 and April 1, 1945 between the Carrier and the Brotherhood are by reference made a part of this Statement of Facts.

Contention (1) is not correct, because the employes must be "remote from their cars or lodging places" before expenses for either meals or lodging will be borne by the Carrier. When working at a point remote from their cars or lodging places, necessary expenses for both meals and lodging are borne by the Carrier. We agree with the Committee's contention (2) that an employe can have only one headquarters at a given time; however, in the instant case the claimants' headquarters was at Baird where it had been located for more than eight months. There is nothing in the Agreement which prohibits the changing of the location of his headquarters as the exigencies of the service require, and the Carrier's right to do so has never been questioned. It is a recognized practice that the outfit car or place of abode furnished to the employes by the Carrier constitutes the employes' headquarters. The claimants' headquarters was at Baird, where they were furnished a lodging place, a victory hut in this instance because of the shortage of outfit cars. Since the expenses for meals were incurred at the same point where the claimants' lodging place was located, the claim should be denied. **See Third Division Award No. 334.**

OPINION OF BOARD: This claim as finally presented and considered on the property is substantially as above stated. It is that the Carrier should pay the named employes the expense of meals purchased by them for the period covered by the claim. Itemized expenditures for the month of July, 1944, only are shown.

The employes involved were members of a B&B gang. They were furnished a portable house as their lodging place while working away from their place of residence. Facilities for the preparation of meals or the securing of meals were not furnished by the Carrier. The claim is for the cost of meals purchased at public eating places. The reasonableness of the cost of the meals is not questioned.

The Employes rely upon Article X (b) of the November 16, 1937, agreement, and Article 23 of the April 1, 1945, agreement. The claim extends from the operative time of the 1937 agreement into the time of the 1945 agreement. We consider then the two articles separately for the claims involved in the time covered by the agreements.

Article X(b) is as follows: "When employes in emergencies are taken from their assigned territory or places of abode and called upon to do work elsewhere, and at places remote from or not accessible to their fixed places of residence, or remote from their cars or lodging places, even though on their assigned territory, the expense of furnishing meals and lodging for such employes will be borne by the Railway Company."

The first contention is that an emergency is not shown. We see no merit in this contention. We think it was intended that whenever the Carrier deemed it necessary to use the employes in the manner indicated in the rule, it would be an emergency under the rule, as distinguished from a normal condition of employment.

So the question is whether or not the employes come within the conditions of the rule. The rule covers two situations: (1) Where the employes "are taken from their assigned territory or places of abode and called upon to do work elsewhere, and at places remote from or not accessible to their fixed places of residence"; or (2) "remote from their cars or lodging places, even though on their assigned territory." The first section is based on "assigned territory", "places of abode", "fixed places of residence." The second section removes the "taken from their assigned territory" as an element and rests on the "remote from their cars or lodging places" as the controlling element.

The Carrier contends that these men were not required to work at places remote from their "lodging places" and hence it is not required to pay for meals. The question gets down to this, what was intended to be embraced in the use of the language, "cars or lodging places?"

We must start with this proposition—that ordinarily a place of abode and a fixed place of residence involve a place where one not only can sleep but also can and customarily does furnish his own meals. Also, it must be recognized that men engaged in this class of work are, when away from their fixed place of residence, furnished outfit cars where they can provide themselves with meals at cost, the same as at home. It must be recognized that the expense of buying meals is considerably more than the expense of furnishing them at home or in outfit cars. That difference enters into the determination of the wage.

Admittedly, the Carrier is under some conditions obligated to furnish "meals and lodging." In that event, the purpose of the provision is to put the burden of the cost of meals upon the Carrier. We think that "lodging places" was meant to include a place where facilities were furnished both for sleeping and the preparation of meals. To say that the furnishing of a "lodging place" without facilities for the preparation of meals avoids the payment is to read out of the rule the "furnishing meals" provision. That provision is applicable not only to the condition which we identify as (1) but also to the condition which we identify as (2). We think the claim should be paid for the period covered by the 1937 agreement, subject, of course, to the condition that the employes establish a comparable situation to that which is shown to have existed in July, 1944, and showing also the expenditures made for meals during the balance of the period claimed.

This brings us to the 1945 agreement. Article 23 is: "In emergency cases, employes taken off their assigned territory to work elsewhere will be furnished meals and lodging by the carrier if not accompanied by their outfit cars. This rule not to apply to employes customarily carrying their midday lunches and not being held away from their assigned territory an unreasonable time beyond the evening meal period."

The inclusive scope of the first sentence of the rule is indicated by the excluding provisions of the second sentence. It does not apply to employes customarily carrying their midday lunch and does not apply where they are not held away an unreasonable time beyond the evening meal period. This contemplates obviously that either at home or in the outfit car the employe is able to furnish his own meals. Here the employes could not do it at home and just as obviously were not furnished facilities where they could do it at their sleeping quarters.

We think it is the fair intent and purpose of the rule that the carrier should pay for the meals under the 1945 agreement where situations are shown to exist substantially as they existed during the month of July, 1944. The claim should be paid for the period covered by the 1945 agreement, subject to the employes establishing the continuance of a comparable situation to that which is shown to have existed in July, 1944, and showing also the expenditures made for meals during the period.

The Carrier contends that the claim should not be allowed in any event for the period prior to the date it was first presented. This on the theory that the payment claimed is a penalty. We do not find here any of the elements that enter into the decisions of the division where the rule invoked has been applied.

The Employees are not here seeking the imposition of a penalty, but rather are making claim for compensation as provided in the rules. Obviously, such a claim must be made after the accrual of the claim.

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 Employes involved in this dispute are respectively carrier and employes 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 is sustained for the periods involved subject to the condition that the employes show a comparable situation to that which is shown to have existed in July, 1944, and showing also the expenditures made for meals during the same period.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1947.