Award No. 6173
Docket No. MW-6206

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when they required Machine Operator John Schaffer to leave his assigned headquarters and refused to reimburse him for expenses incurred;

(2) That Machine Operator John Schaffer be reimbursed in the amount of $53.60 for the cost of meals while working away from his assigned headquarters during the period of March 5, to March 28, 1951.

EMPLOYES' STATEMENT OF FACTS: Mr. John Schaffer was assigned by bulletin to operate gas shovel No. 910, with headquarters at Denver, Colorado.

During the latter part of December, 1950, Gas Shovel 910 was sent to the shop for repairs and Machine Operator Schaffer was directed to accompany the machine to assist in making repairs.

On February 28, 1951, Machine Operator Schaffer was directed to report at Cheyenne, Wyoming, on March 5th, to operate Clamshell 99007. Mr. Schaffer was furnished a bunk car for sleeping accommodations, but no cook or dining cars were furnished.

During the period March 5 to 28th, both dates inclusive, Mr. Schaffer incurred meal expenses amounting to $53.60. Mr. Schaffer submitted request for reimbursement for expenses incurred on the Carrier's regular expense account forms. The Carrier returned the expense account to Mr. Schaffer, advising that they would not make any reimbursement for Mr. Schaffer's meal expenses.

The agreement in effect between the two parties to this dispute dated November 16, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 37 of the effective agreement reads as follows:

"RULE 37

OUTFIT CARS. Outfit cars shall be maintained in good sanitary condition. It will be the duty of the foreman or employe in

Thus, the Employes agree that Mr. Schaffer occupied his outfit car while he was assigned at Cheyenne, therefore, he was not working away from his assigned headquarters as his outfit car is his headquarters.

In view of the above, Mr. Schaffer's claim for expenses should be declined.

OPINION OF BOARD: Claimant, Machine Operator John Schaffer, was regularly assigned to operate Gas Shovel No. 910, a dragline, at Denver, Colorado. On March 5, 1951 Claimant reported to the Carrier at Cheyenne, Wyoming to operate its Clamshell 99007. He remained at Cheyenne from March 5 to 28, both dates inclusive, and the Claim made is for the actual cost of his meals during this period.

The claim made is based on Rule 35 of the parties' Agreement which, as far as here material, provides:

> "Employes will be reimbursed for cost of meals and lodging incurred while away from their outfits or headquarters by direction of the Company. * * *"

The question is, did Claimant, within the meaning of the quoted language of Rule 35, incur these expenses while away from his outfit or headquarters by direction of the Carrier?

The burden of establishing facts sufficient to support a claim is upon the party seeking its allowance.

When, in the latter part of December 1950, Gas Shovel No. 910 was sent to the shops at Denver for repair Claimant was required to accompany it to assist in making the repairs, and did so. That was proper. See Rule 5, Roadway Machine Department 5, Note 3 of the parties' Agreement. Claimant continued to assist in this repair work until the evening of February 28, 1951. That evening Roadmaster R. F. Harris notified Claimant that his assignment on Gas Shovel No. 910 was cancelled as of that moment but, at the same time, advised him of some work at Cheyenne, Wyoming which Carrier desired to have him do. The work at Cheyenne was of less than thirty days duration and consequently did not have to be bulletined. See Rule 10(c). Claimant was given two days to prepare his combination outfit car No. 99929. This he did on March 1 and 2, 1951. This combination outfit car had been assigned to him for many years. Claimant, during the night of March 4, 1951, deadheaded from Denver to Cheyenne on passenger train No. 29 and reported for work at Cheyenne on Monday morning the fifth of March. By doing so he was able to be home on Sunday, March 4, his outfit car having been taken to Cheyenne on Saturday, March 3. He was paid traveling time for this trip. Claimant operated Carrier's Clamshell No. 99007 at Cheyenne during the period from March 5 to 28, 1951, both dates inclusive, occupying his outfit car No. 99929. As already stated, Carrier had transported this outfit car to Cheyenne on March 3 and had placed it where Claimant could use it while operating the Clamshell. Under this situation the combination outfit car was Claimant's headquarters while working at Cheyenne and these expenses were not incurred while he was away from either his outfit or headquarters.

The Organization contends Carrier did not abolish or cancel Claimant's assignment on the 28th of February because, if it did and then returned him thereto without bulletin after the work at Cheyenne had been completed, it violated Rules 12(f) and 10(a) of their Agreement. It may be that Carrier violated these Rules but that would not refute what it did. If Carrier breached these Rules of the Agreement it could be held responsible therefor by making claims based on the Rules that it violated. That is not the situation here.

The System Committee also contends that Carrier's use of a combination outfit car is in violation of Rule 37. This Rule provides all outfit cars

shall be maintained in good sanitary condition and that living and sleeping cars will be screened when necessity therefor arises. It also provides what equipment shall be provided in cars used for cooking, eating and sleeping. It does not provide Carrier cannot use combination outfit cars, nor do we think such was the object of the Rule when considered in the light of working conditions such as here. This construction of the Rule is in accord with the practice of Carrier thereunder and apparently in accord with an agreed understanding of the parties.

In view of the foregoing we find the claim to be 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 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 Carrier has not violated Rule 35 of the parties' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.