Award No. 6222
Docket No. SG-6133

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
—Eastern Lines—

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway that Messrs. L. N. Pruet, C. H. Graham, E. M. Matticks, and G. R. Stephenson be allowed actual living expenses accrued by them when they were sent from their home station on the Missouri seniority district to perform signal line-wire work at Coal City, Ill. (a point not on their home seniority district), starting on or about April 19, 1948, until on or about May 29, 1948, when the last of the claimants returned to his regular assignment on his home seniority district.

EMPLOYES' STATEMENT OF FACTS: The claimants, Messrs. Pruet, Graham, Matticks, and Stephenson, when sent to Coal City, Ill., a point off their home seniority district, held regularly assigned positions on the Missouri Division, their home seniority district. The claimants had secured these positions by virtue of their seniority established on the Missouri Division. The claimants are hourly-rated employes.

On April 15, 1948, the claimants received instructions to report at Coal City, Ill., on April 19, 1948. On their arrival at Coal City they reported to Signal Foreman Terry and were ordered to work on signal linewire work in the vicinity of Coal City and continued at this work until May 29, 1948, when the last of the claimants returned to his regular assignment on his home seniority district.

The camp cars to which the claimants were assigned to on their home seniority district were not available to them while working at Coal City, causing the claimants to accrue expenses for meals while at Coal City.

A bunk car was provided for the claimants by the Carrier; therefore, they did not accrue lodging expense.

The claimants filed expense accounts with their superior officer, Signal Supervisor F. D. Hartzell, at Chillicothe, Ill., and he, under dates of May 3 and 4, 1948, declined to allow the living expenses accrued.

Formal claim was presented to the Carrier in the usual manner and appealed in proper order, without securing a satisfactory settlement.

The Third Division has not only consistently recognized that the function of the Board is limited to the interpretation of agreement rules in effect between the parties to a dispute and that it has no authority to alter or extend the terms of any agreement (See Award 5079 and many others) but has also repeatedly held that the conduct of the parties to an agreement is often just as expressive of intention as the written word. See Awards 2436, 3603 and others.

Attention is also directed to the complainant organization's delay of nearly three years in progressing the instant dispute to the Third Division following its denial by the Carrier's highest officer of appeal, under date of March 11, 1949, as outlined in the last two paragraphs of the Carrier's Statement of Facts. While there is admittedly no rule in the current Signalmen's Agreement which prescribes a time limit within which a dispute must be progressed to the Adjustment Board, the Organization's delay of almost three years in progressing the instant dispute to the Board is clearly indicative of a lack of real confidence in their claim, if not a complete abandonment thereof. See Awards 3231, 4941, 4943, 5190 and others.

All that is contained herein is either known or available to the employes or their representatives. (Exhibits not reproduced.)

OPINION OF BOARD: The Board is required to determine the question as to whether certain employes holding seniority on the Missouri Division and who were temporarily transferred to the Illinois Division and were furnished a camp car are entitled to reimbursement for meals. The parties are in agreement that Section 16, Article II, which reads in part as follows, is controlling: "Actual living expenses will be allowed at the point to which sent if meals and lodging are not provided by the Company or camp cars to which such employes are assigned are not available." Simply stated, did the Company fulfill the condition by making available "camp cars to which such employes" were assigned. The Organization states that these employes were assigned to certain camp cars in the Missouri Division. These particular camp cars were not made available to the employes upon their temporary transfer to the Illinois Division. The Carrier denies that the particular camp cars must be sent to Illinois under the terms of the provision. The Carrier contends that it fulfilled the required condition by having camp cars available and assigning these employes to the camp cars.

In Award 935, rendered by this Board, Referee Swacker analyzed a provision that "Actual necessary expenses will be allowed if boarding cars to which employe is assigned are not available." In that case the Award reads:

> "The language of Rule 4-(c) is far from clear. If the Carrier's construction was put on it, i.e., that the employe was located in a boarding car at the point from which sent; then a literal reading of it would require that that particular car had to be moved to the point to which sent; that one there would not do. This would be an absurd application of the rule. We are inclined to take the view expressed by Assistant General Manager Tobin in his letter of August 22, 1938, quoted at the outset of the Carrier's position, insofar as he states that the rule in its entirety contemplates a man in unassigned road service who, by proper authority, is sent to a point away from boarding car, **or the regular point at which the man got his meals and lodging.** With this view of the rule, if the man is furnished a boarding car at the point to which sent, he is not entitled to expenses. If he is not furnished a boarding car there, then he is entitled to expenses. Such would seem to be the only reasonable intent of the rule."

If the language used by the parties in the effective Agreement be considered as susceptible to more than one interpretation, the Board must consider the reasonable intent of the Rule. The Claimants were assigned to different camp cars in Missouri, which they shared with other employes.

It would be unreasonable and impracticable to require the Carrier to discommode the remaining employes and transfer these two cars to Illinois when it had an unoccupied camp car in the Illinois Division. Such a situation could not have been a reasonably intended result. The Claimants were in no different position, with reference to the expense of meals, while in camp cars in Illinois than they were in Missouri. The Carrier's position is further supported by thirty years of practice under this rule, which has been in effect since February 16, 1922. The Organization attempted but failed to have this rule changed through negotiations.

Sections 14 and 16 of Article II makes no difference between the performance of work within an employe's home seniority district and a foreign district. This Board cannot by interpretation find such a distinction. The letter Agreement of the parties dated March 4, 1943, confirming their understanding of the proper application of these identical Sections contains no limitation in its Preamble to the matter of the performance of work on the employe's home seniority district. Section 2 of this letter Agreement does contain such a limitation but related specifically, however, only to the procedure to be followed in selecting the employes to be assigned to this work. Section 4 of the same document, after referring to Section 14 and 16 of Article II, states: "It being understood that the camp cars furnished them at the point to which sent need not necessarily be those occupied by the signal gang from which they are detached." The record does not show that this letter Agreement was ever abrogated. Even if it be assumed, for purpose of discussion, that this letter Agreement of March 4, 1943, was intended to be limited only to performance of work in the employe's home seniority district, the Board in construing the language of the effective Agreement dated February 1, 1946, cannot find that the parties reasonably intended that while the car occupied need not be the particular car, while work is done in the Missouri Division, the home seniority district, it must be the identical car if work is done in the Illinois Division, a foreign district.

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 aproved June 21, 1934;

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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1953.