Award No. 6904
Docket No. MW-6883

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed to furnish Bridge and Building Gang No. 4 with ice from July 28, 1952, to August 1, 1952, both dates inclusive;

(2) Messers. V. W. Smith, E. R. Boham, W. R. Bolinger and W. D. Hulser be reimbursed for the cost of meal expenses incurred while required to purchase their meals away from their assigned outfits beginning on July 28, 1952, and continuing through August 1, 1952, account of food spoilage caused by lack of refrigeration.

EMPLOYES' STATEMENT OF FACTS: It has been a long established practice to furnish company ice to employes living in company-owned buildings, camps, or outfit cars, particularly during summer months when refrigeration is so essential to the preservation of food items.

Ice is particularly required for the needs and comforts of employes living in camp or outfit cars, in order to permit purchase of food items well in advance of the time they are prepared for consumption in order to preserve both uncooked and cooked food items; to eliminate the necessity of purchasing food items as they are needed for each meal; and because camp and outfit cars are seldom—if ever—located at points where it is convenient to purchase food items three times daily for each of the three daily meals normally consumed.

In the instant case, the Claimants were furnished ice on July 21, 1952, while stationed at Bigelow, Missouri. The outfit cars were moved to Skidmore, Missouri on July 24, 1952. On Thursday morning, July 24, 1952, the foreman of the outfit gang requested a purchase order for ice to be delivered to the outfit cars at Skidmore on July 28, 1952. Upon receipt of the purchase order, the foreman attempted to purchase the ice at the place where it had usually been purchased at Skidmore, but found that ice was no longer available at that point. Similar efforts to purchase ice at Burlington Junction by the foreman were unsuccessful.

Master Carpenter Pearson visited this gang on Monday morning while the gang was engaged in work on Bridge 19.48 at Skidmore, at which

intended that the employes would be paid $3.00 each day on which they were not furnished a specified amount of ice, the framers of the rule obviously would have included such provision in the rule. The rule contains no provision for payment of any amount; in fact the rule does not even require the Carrier to furnish ice every day nor does it require the Carrier to furnish ice at all if the employes are at a point where the shipment would result in loss of time or long movement from the stock of company ice.

During the handling of the instant dispute on the property, the Employes also cited Rule 47 in alleged support of this unwarranted claim. Rule 47 reads as follows:

> "Rule 47. Employes will be reimbursed for cost of meals and lodgings while away from their regular outfits or regular headquarters by direction of 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. However, the exception for midday lunch customarily carried by employes does not include water service repairmen and water service repairmen helpers."

The rule provides that the Carrier will reimburse employes for meals and lodging only when such employes are away from their regular outfits or regular headquarters by direction of management. The rule is clear and unambiguous—it cannot be misconstrued. The claimants in this case were with their regular outfits, their regular headquarters, at all times during the period specified in the claim. They were not required to be away from their regular outfits by direction of the management at any time during this period. Consequently, the provisions of Rule 47 are clearly inapplicable in this case.

In conclusion, the Carrier, respectfully submits that the "practice" referred to in Rule 60 merely requires the Carrier to furnish ice in instances where it can be shipped without too great a loss of time or too long a movement from stock of company ice. The Carrier not only complied with the language, purpose and intent of the rule, but actually went far beyond its obligation under the rule. Under the circumstances the claim is completely lacking in support, contractually or otherwise, and must in all things be denied.

The Carrier affirmatively states that all the data herein and herewith submitted has previously been submitted to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties seek an interpretation and application of a rule which, in part, provides:

> "Present practice with respect to furnishing company ice will be continued."

Only when the rule first was negotiated did the parties come to any real understanding, mutually agreed on, as to what the rule meant. At that time the practice was "to furnish ice without charge to gangs living and boarding in outfit cars where ice can be shipped without too great a loss of time or too long a movement from stock of Company ice." The rule was intended to include within its coverage B&B, Welding and Extra Gangs and Work Equipment Operators living in outfit cars.

No other mutual understanding as to the rule or its application has been reached on the property, although there have been rules revisions from time to time without change in the language of the confronting rule.

Because the Carrier has, on occasion and perhaps somewhat consistently, furnished ice from a source other than that agreed, when it has found it more

economical, practical, and convenient to do so, thereby resulting in better service to its Employes, they now contend for a change in practice in accordance with dates of later rules revisions.

Here the mutually agreed on practice is established and shown in the record by an exchange of letters, and we hold the expressly agreed on practice to be of the same binding force and effect as though it had been written into the body of the rule. It only can be changed by conference and negotiation on the specific rule, or by some later mutually agreed on or accepted practice as a substitute for the former.

That which the Employes contend for as a practice does not rise to that dignity. Greater weight will be given to evidence of a mutually agreed on practice, not changed in negotiations at time of rules revisions, than to any understanding gained by either party due to some loose practice on the property at variance with and contrary to that on which mutual agreement has been reached.

Moreover, the Carrier has done nothing more than exercise the broad discretion which is vested in it by the rule and no claim of established practice can properly be based thereon.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1955.