

Award No. 11246

Docket No. MW-10717

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement and the established practices thereunder when it failed to provide a cook for District B&B Gang No. WB-2 on February 4, 1957 and on days subsequent thereto.

(2) Furloughed Cook D. T. Hankins be allowed pay at the cooks' rate for each day District B&B Gang No. WB-2 was worked without a cook since February 4, 1957.

EMPLOYEES' STATEMENT OF FACTS: Traditionally, in accordance with the Agreement rules and the established practices thereunder, cooks have been provided by and at the carrier's expense for employees assigned to Bridge and Building gangs headquartered in outfit cars which are moved from point to point over a seniority district in accordance with the requirements of service.

On February 4, 1957, the Carrier established and placed in service District B&B Gang No. WB-2 consisting of one Foreman, two Mechanics, one Helper and one Apprentice, with headquarters in outfit cars, to work at various locations over their seniority district in accordance with the requirements of service.

Consequently the Claimant, who has established and holds seniority as a cook and who was in furloughed status, available and willing to work, submitted the instant claim to Division Engineer Moore as follows:

"Birmingham, Alabama
February 9, 1957

Mr. J. S. Moore, D.E.
507 Transportation Building
Birmingham, Alabama

Dear Sir:

You assigned to District B&B Gang WB-2 one Foreman, 2 Mechanics, one Helper, and one Apprentice, without a cook.

(d) Under no rule contained in either Maintenance of Way Agreement has Carrier contracted to employ cooks in gangs consisting of less than six men.

Claim being unsupported by the agreements in evidence, the Board has no alternative but to make a denial award.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to reply thereto and submit any additional evidence necessary for the protection of its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employes and The Southern Railway Company.

On February 4, 1957, the Carrier established and placed in service District B&B Gang No. WB-2 consisting of one Foreman, two Mechanics, one Helper, and one apprentice. Their headquarters were in outfit cars. Their work was at various locations over their seniority district. No cook was assigned to the Gang. The Petitioner alleges that it has been the recognized past practice for the Carrier to provide and assign cooks on all B&B road gangs of the type here involved. The Carrier contends that it has never been the practice to employ cooks in B&B gangs under circumstances as here involved.

There are no provisions in the Agreement which require the Carrier to send a cook with a B&B Gang consisting of less than six men. Therefore, we must look to past practice.

It is impossible to determine the practice from the evidence furnished us. The parties have offered evidence to a contrary practice.

We do not believe, generally speaking that cases should be remanded. However, under the specific facts and circumstances that attend this dispute, we remand it to the property for further handling and return here if the parties are unable to agree.

If a substantially consistent and well established practice is found to exist, the claim should be disposed in accordance with the practice. Otherwise, the claim should be denied.

This opinion is restricted to the particular facts and circumstances attending this case.

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.

AWARD

Claim remanded to the property for disposition in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.