

Award No. 11250

Docket No. MW-10721

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
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 B&B Gang No. 9 on July 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, and 31, 1957 and as a consequence thereof,

(2) - (a) Furloughed Cook Arley Gooch be allowed eight hours' straight time pay at the cook's rate for each of the dates referred to in Part (1) of this claim.

(2) - (b) B&B Foreman J. A. Early and B&B Helper E. L. Allen each be allowed forty-four hours' pay at their respective straight time rates for time consumed in preparing meals on the dates referred to in Part (1) of this claim. (Four hours per day.)

EMPLOYES' STATEMENT OF FACTS: The positions of B&B Foreman and B&B Helper are embraced within the scope of the Agreement commonly referred to as the "Foreman's Agreement", whereas positions of cooks are embraced within the scope of the Agreement referred to as the "Laborer's Agreement."

In accordance with the Agreement rules and the established practice thereunder, cooks have traditionally been provided by and at the Carrier's expense for employes assigned to Bridge and Building gangs headquartered in outfit or trailer cars which are moved from point to point over a seniority district.

The claimants, B&B Foreman Early, Helper Allen and Cook Gooch, were regularly assigned as such on B&B Gang No. 9, with headquarters in outfit or trailer cars and worked at various locations over their seniority district.

On July 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and 31, 1957 the position of cook on the above referred to B&B Gang was abolished, thereby causing

Claims being an absurdity, without any basis and unsupported by any provision of the agreements in evidence, the Board is left with no alternative but to make a denial award.

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

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make response thereto and submit any other 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 Cincinnati, New Orleans and Texas Pacific Railway Company.

The issue in this case is the same as Docket No. MW-10717, Award No. 11246. The decision turns on whether there is an established practice on the property.

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.