Award No. 12030
Docket No. SG-11620

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it did not allow Signalman V. L. Borcherding expenses of $63.80 for the period of June 16 to June 30, 1958, while he was performing service at Chester, Illinois, away from his assigned established headquarters.

(b) The Carrier now allow Signalman V. L. Borcherding expenses of $63.80, as submitted on Form 1361, for the period of June 16 to June 30, 1958 inclusive. [Carrier's File: VG-S 225-18-12]

EMPLOYES' STATEMENT OF FACTS: Mr. V. L. Borcherding is regularly assigned to a position of Signalman with assigned headquarters Camp Cars. During the period of this claim, the Camp Cars were located at Valmeyer, Illinois. Commencing June 16, 1958, Signalman Borcherding was assigned by the Carrier to fill a position of a vacationing Signal Maintainer with headquarters at Chester, Illinois. Signalman Borcherding filled the vacancy from June 16, 1958, through June 30, 1958.

The vacancy to which Signalman Borcherding was assigned, was approximately 40 miles from his regular assigned established headquarters at Camp Cars located at Valmeyer, Illinois, and did not permit his leaving from and returning to his regular assigned Camp Car headquarters daily.

Inasmuch as Signalman Borcherding was sent from his home station (Camp Cars) and did not return each day, he was entitled to actual expenses for meals and lodging while away from his regular assigned headquarters.

Signalman Borcherding submitted an expense account for meals and lodging in the amount of $63.80 covering the period of June 16, 1958, to June 30, 1958, inclusive, to Mr. W. E. Laird, Division Engineer, who denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: When a signalman with regularly assigned headquarters in camp cars located forty miles from his residence is temporarily transferred to relieve a maintainer at a point where the signalman's family lives and at which he maintains a residence for his family does the Carrier violate the agreement in refusing to pay the signalman meals and lodging expense money for the time during which he relieves the maintainer and takes his meals and lodging with his family? We hold it does not.

For the period June 16, 1958 to July 5, 1958 a signalman was transferred from his regular assignment headquarters at Valmeyer, Illinois to Chester, Illinois a point away from his headquarters but a point at which his family lived and at which he maintained a residence for his family. Citing Rules 23(d) and (e) and Rules 7(e) and 27(c) the signalman contended that regardless of where he took his meals and lodged he was entitled to his expenses money if his assignment took him away from his "home station" or "headquarters". In fact during this time the employe took his meals and lodged with his family at Chester which was away from his "home station".

The language of the cited rules is as follows:

> "Rule 23. (d) Road service employes, either monthly or hourly rated, will be paid actual necessary expenses when away from home station, except employes who normally return to their home station daily will not be reimbursed for the expense of their noonday meals when leaving and returning the same day.
>
> "(e) Reimbursement allowance for expenses incurred under rules of this schedule during the preceding month, will be payable not later than the fifteenth of the month following."
>
> "Rule 7. (e) In emergency cases such as derailments, washouts, snow blockades, fires and slides, employes taken away from their outfits and home stations to work elsewhere, will be furnished meals and lodging by the railroad, or they will be allowed actual expenses for such meals and lodging."
>
> "Rule 27. (c) Camp cars will be the home station as referred to in this agreement for employes assigned to such cars and who have no other assigned home station."

We do not read these rules to require such a result as is here sought.

The rules must be read in the light of their purpose. Manifestly it was the intent of the parties that employes assigned away from their home stations be given some relief from the added expense resulting from in effect maintaining two homes. When the employes assignment in fact takes him to his home area the need for relief terminates.

Thus in reading Rule 23(d) to allow for employes to ". . . be paid actual necessary expenses when away from home station, . . ." we cannot read this language in a vacuum and ignore the actual facts of the situation. We do not believe under the facts of this case that the expense of the meals and lodging taken in the employes home were "actual necessary expenses" for which he was entitled to reimbursement.

We have considered the jurisdictional question raised by the Carrier relative to the timeliness of the appeal and we find that the position of the Carrier on the finality of its refusal to honor the claim on the property was not sufficiently unequivocal by its letter of November 11, 1958 to begin the running of the appeal time and that the appeal was subsequently taken within the prescribed time.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1963.

LABOR MEMBER'S DISSENT TO AWARD NO. 12030 DOCKET NO. SG-11620

Award 12030 neither interprets nor applies the agreement between the parties, the purpose for which the Congress of the United States established this Board; it is a classic example of the Majority (Carrier Members and Referee) substituting their opinion of how an agreement should read for the rule negotiated by the parties. It would seem appropriate to ask at this juncture why employes should bother to secure agreements with their employers if Carrier Members and Referees are bound to ignore those agreements and apply what, in their judgement, should be the terms of employment. The Majority has, in fact substituted its conception of equity for the negotiated rule and rendered meaningless the mandate of the Congress in the Railway Labor Act that:

> "It shall be the duty of all Carriers, their officers, agents, and employes to exert every reasonable effort to make and **maintain agreements** * * *." (Emphasis ours.)

The agreement is quite clear and free of ambiguity, and it should have been simply applied instead of being mutilated.

Award 12030 is a contemptible error; therefore, I dissent.

W. W. Altus