Award No. 12839
Docket No. SG-12276

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(a) The Southern Pacific Company violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958, including revisions), particularly Rule 22.

(b) Mr. L. C. Sauer be reimbursed for actual necessary expenses at the rate of seven (7) dollars per day from July 7, 1959, to August 21, 1959, inclusive. [Carrier's File: SIG 128-3, S-65-6-101]

EMPLOYES' STATEMENT OF FACTS: During the period involved in this dispute the claimant, Mr. L. C. Sauer, was a Relief Signal Maintainer with outfit car designated as his home station. As evidence that the outfit car was the designated home station of this position, we submit Brotherhood's Exhibit No. 1, which is a copy of Signal Department's Assignment & Vacancy Notice No. 1032 of October 15, 1956. The position in question is the fourth shown on page 2 thereof. Notice No. 1033 of November 6, 1956, which has been reproduced, attached hereto and identified as Brotherhood's Exhibit No. 2, shows that R. L. Wilkinson was assigned to that position. The number of this gang was later changed to Gang No. 4 and the claimant subsequently acquired the position in question on a displacement. Displacements are not announced by notice or bulletin.

On or about July 7, 1959, the outfit car was taken away by the Carrier, leaving the claimant on a position with no headquarters, or home station. The Local Chairman, Mr. W. E. Crawford, discussed this matter with the Carrier and was advised that an attempt was being made to replace the outfit car, but that if a claim was filed, the position would be abolished. In order to protect the claim under the time limit rules, **Local Chairman Crawford** presented the following claim, dated **August 11, 1959**, to **Mr. C. H. Travis, Signal Supervisor:**

OPINION OF BOARD: This is a claim for expenses on behalf of Relief Signal Maintainer, L. C. Sauer, for an alleged violation of Rule 22 of the Signalmen's Agreement. The rule is quoted as follows:

"RULE 22.

ROAD SERVICE — WHEN HELD OUT OVER NIGHT

Hourly rated employes, sent from home station to perform work and who do not return to home station on the same day (within 24 hours from regular starting time of their assignment), shall be allowed time for traveling or waiting in accordance with Rule 23. For hours worked, they shall be allowed straight time for straight time hours and overtime for overtime hours. Actual expenses shall be allowed at the point to which sent if meals and lodging are not provided by the Company, or if outfit cars to which employes are assigned are not available."

The claim covers the time period between July 7, 1959, and August 21, 1959. The employes charge that on July 7, 1959, Carrier removed the outfit car which had been assigned to Claimant, thereby leaving him without a headquarters or home station. Therefore, they claim, he is entitled to receive compensation for actual expenses, at the rate of seven dollars per day, from the time of the removal until August 21, 1959, when the position was abolished.

It is argued by Carrier that Rule 22 establishes three specific requirements which employes must meet if the claim is to be sustained. These are as follows: the employe must have been held out overnight; he must have suffered loss of actual expenses and the Carrier must be shown to have refused to make an outfit car available to him.

The Carrier contends that during the entire period of the claim, Sauer did not leave Beaumont, and, therefore, was never "held out over night" as Rule 22 provides. It is, in fact, shown that Claimant worked as follows during the period of time involved in this claim:

July 6–24, 1959: Relieved coderman at Beaumont.

July 27–August 7, 1959: Performed signal work at Beaumont.

August 10–21, 1959: Relieved signal maintainer at Beaumont.

Carrier further alleges that Claimant had refused to live in the outfit car while performing this work, but lived, instead, at his home in Beaumont. In fact, it is shown that as far back as March 5, 1958, Claimant had pursued this practice and had even commuted to Beaumont when his work required that he be away from his home city while on the job.

Carrier also alleges that the rule provides for the payment of "actual expenses"; and that Claimant has failed to prove the existence of any actual expenses, but has relied upon an arbitrary figure for purposes of this claim.

In defense of its action of removing the outfit car on July 7, 1959, Carrier says that the Claimant had steadfastly refused to make use of it for his home, that he acquiesced in its removal, and that he did not ask for its return. They maintain that it was, in fact, available to him for the asking, but he refused to live elsewhere than at his home.

In the final analysis, it seems that the employes actually base their claim on the third part of Rule 22, that when Carrier removed the outfit car from the Claimant, it violated the provisions of the Agreement which required Carrier to make an outfit car available.

It is undenied that Carrier had made the car available in the past and only removed it when it became evident that Claimant was not going to make use of the equipment. This would actually seem to be a sound business operation, especially in view of the fact that Carrier stood ready to return the car upon Claimant's request. It seems that the car was actually "available" at all times to the Claimant, since all he had to do was make known his desire to use the car.

It is correct to say that a car is available even though it is not within a stone's throw of the Claimant. The physical presence of the car is not necessary to establish availability. This is subject to construction and consideration of the intent of the parties Certainly in this case the car was made available to the employe, and he could have used it if he so desired. We are of the opinion that Carrier fulfilled its obligation in regard to providing the requirements of the Agreement for this Claimant, and therefore, the claim should be denied.

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 11th day of August 1964.