

Award No. 13526

Docket No. MW-13390

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SEABOARD AIR LINE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it made unauthorized deductions (for meals not taken) from the pay checks of Laborers S. Boykin, Jr., R. L. Byron, Alton Freeman, J. D. McCoy and W. L. Yarber beginning with February 13, 1961 and from the pay checks of Laborers Elijah Aaron, Johnny Ellison and Curtis Sanders beginning with March 6, 1961.

(2) That each of the above named claimants be reimbursed for the amounts deducted from their respective pay checks for board beginning with February 13, 1961 and March 6, 1961 and for any unauthorized deductions thereafter made for board so long as they are not receiving their meals on the camp cars.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case were fully set forth in the letters of claim presentation, wherein we stated:

"STATEMENT OF FACTS:

On February 6, 1961, the above-named employees notified Mr. Ward, the Foreman on T&S Gang #7, that they would temporarily discontinue eating any meals on the camp cars beginning February 13, 1961. However, upon receiving their paychecks on March 2, 1961, they noted the following deductions were made: Board for February 13, 14, and 15, 1961. Upon receiving their paychecks on March 15, 1961, each of these employees had a deduction for board in the amount of \$11.33. When they received their paychecks on March 31, 1961, these employees' paychecks showed deductions for board as follows:

S. Boykin, Jr.	\$15.97
R. L. Byron	15.97
W. L. Yarber	15.97
Alton Freeman	4.12
J. D. McCoy	11.33"

"STATEMENT OF FACTS:

On March 2, 1961, the above-named employees notified Mr. G. T.

boarding car would certainly be economically unfeasible" and "The requirement made by the carrier was reasonable and not in violation of the existing agreement between the Organization and the Carrier." In the instant case the requirement referred to had the approval of the Organization, and in effect the Organization is taking the position that the contentions and desires of the individual employes must prevail in such cases. Such a theory would destroy the whole foundation of proper labor relations. As held in First Division Award 5292:

"Any consistent and just enforcement of labor agreements is necessarily dependent upon sustaining the actions of the duly authorized representatives of labor organizations. If their agreements be enforceable only at the whim or caprice of the employes they represent, the situation would resolve itself into one of chaos and uncertainty."

Also, it was held in First Division Award 14166:

"The stability of the employment relationship requires the observance of the actions and agreements of the employes 'duly authorized representative.'"

There is no merit to this claim and it should accordingly be denied.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute involves the interpretation of the following language:

"Employes may be granted permission by foreman to eat away from cars when sufficient advance notice is given to him by the employes".

The employes involved in this claim gave notice to the foreman that they intended to temporarily suspend taking their meals at the car as of certain dates. They urge that this notice was sufficient to comply with the rule stated above. We do not feel that this is the question in issue in this case.

The real question to be determined is whether or not the foreman granted permission to the employes to eat away from the car. The burden of proving that sufficient permission was granted is on the employes themselves, and is not an affirmative defense, as the Organization contends.

The fact that, "employes may be granted permission;" causes us to hold that the granting of such permission is discretionary with the foreman. Therefore, in order to sustain the claim, we would have to find that such deductions were made after permission had in fact been granted.

The record is void of any proof that the foreman granted the required permission to the employes. Therefore, the claim will be denied.

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 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 29th day of April 1965.