

Award No. 16369

Docket No. MW-16911

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

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

(1) The Carrier violated the Agreement when it refused to reimburse Messrs. Donald Perkins, Lee Tidler, John Durr, H. Reecer and Cleo Badgley for "actual necessary expenses for meals" from July 12 to August 1, 1965. (Carrier's file 30-20-142.)

(2) The Carrier further violated the Agreement when it refused to reimburse Messrs. Donald Perkins, Lee Tidler, John Durr, H. Reecer, Cleo Badgley and Thomas O'Rourke for "actual necessary expenses for meals" from August 14 to 28, 1965. (Carrier's file 30-20-143.)

(3) The Carrier be required to reimburse the aforementioned employees for the actual meal expenses each incurred during the periods mentioned in Parts (1) and (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants have established and hold seniority in their respective classes in the Bridge and Building Department on the Lake Erie and Western District. They were regularly assigned to a B&B gang which was headquartered in camp cars. Since a cook had **not** been provided for or assigned to said gang, the claimants ate their meals at restaurants in whichever town their camp cars were located. They submitted expense accounts at regular intervals and were subsequently reimbursed by the Carrier for the actual expenses incurred for said meals.

On or about July 1, 1965, the subject B&B gang moved, with its camp cars, to Muncie, Indiana (Lake Erie and Western District) to work at the freight house. Since said gang was still without a cook, the claimants continued to take their meals at restaurants.

On July 12, 1965, the Carrier moved a B&B gang which was headquartered in camp cars and to which a cook was assigned, from the Clover Leaf District to Muncie, Indiana to perform certain other work. It then notified the claimants that, effective that date, they would no longer be allowed expenses for meals,

This remodeling was assigned to the Lake Erie and Western District's Bridge and Building gang. The claimants were assigned to this gang and their headquarters were camp cars on line. The complement of the gang did not include a cook.

Due to the magnitude of the remodeling job and the fact that time was of essence, the Cloverleaf District Bridge and Building gang was transferred, under Rule 7 of the agreement, to Muncie to augment the Lake Erie and Western District's gang. The complement of the Cloverleaf District gang included a cook.

At the time the two gangs were combined the Cloverleaf District cook performed the cooking for the combined gangs. This arrangement extended over two periods, July 12 through August 1, 1965, and August 14 through August 27, 1965. During these two periods the claimant Lake Erie and Western District employees were not allowed meal expenses.

Under date of August 25, 1965, a claim was originated and directed to B&B Supervisor R. F. Miller by Vice Chairman Carl L. Mulford, alleging a violation of the agreement account the claimants Don Perkins, Lee Tidler, John Durr, H. Reecer, and Cleo Badgley were not reimbursed meal expenses for the period July 12 through August 1, 1965. The claim requested such reimbursement. Copy of the claim is attached as Carrier's Exhibit 1-A. Copies of correspondence reflecting the subsequent handling of the claim on the property are also attached hereto as Carrier's Exhibits 1-B through 1-K.

Under date of September 9, 1965, another claim was originated and directed to B&B Supervisor R. F. Miller by Vice Chairman Carl L. Mulford, alleging an additional violation of the agreement account the claimants Don Perkins, Lee Tidler, John Durr, Homer Reecer, Cleo Badgley and Thomas O'Rourke were not reimbursed meal expenses for the period August 14, through August 27, 1965. The claim requested such additional reimbursement. Copy of this claim is attached as Carrier's Exhibit 2-A. Copies of the pertinent correspondence reflecting the subsequent handling of the claim on the property are attached hereto as Carrier's Exhibits 2-B to and including 2-K.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants hold seniority in the Bridge and Building Department on the Lake Erie and Western District. They were regularly assigned to a B&B gang which was headquartered in camp cars, and since a cook had not been provided for or assigned to said gang, Claimants took their meals at restaurants in whichever towns their camp cars were located. They submitted expense accounts for same and were eventually reimbursed by the Carrier for expenses incurred for such meals. On or about July 1, 1965, the same B&B gang moved with its camp cars to Muncie, Indiana, and since it was still without a cook, Claimants continued to eat at various restaurants and submitted expenses as before, and were reimbursed.

On July 12, 1965, the Carrier moved a B&B gang, which was headquartered in camp cars and to which a cook was assigned, from the Clover Leaf District to Muncie, Indiana. It thereupon notified the Claimants that effective that date,

they would no longer be allowed expenses for meals, instructing them to take their meals at the camp cars of the Clover Leaf gang.

Claimants during the periods mentioned in the claim, followed these instructions. They were required to pay the new B&B gang for each meal and Carrier has refused to reimburse them.

Petitioner, in recognition of the foregoing facts has alleged a violation of Rule 56 of the Agreement, which, in pertinent part reads as follows:

"RULE 56. CAMP CARS

Camp cars shall be provided as headquarters for employes not otherwise assigned to a home station. They shall be maintained in good condition and it shall be the duty of the foreman to see that they are kept clean and sanitary. They shall be screened, wired for electric lights and provided with heating facilities, sufficient ventilation and air space. Shower baths and washing facilities will be provided. Sleeping cars shall be equipped with beds, springs and mattresses. Dining and kitchen cars shall be provided with appropriate cook stoves, sinks, cooking utensils, tables, chairs, refrigerators. Electricity and ice will be provided where available. When camp cars are occupied by five or more men living in the cars, cook or employe to cook will be provided; if not provided, employes will be allowed actual necessary expenses for meals."

The gist of the Petitioner's argument is simply that since the cook was assigned to the other B&B gang, and not to their gang, Carrier must reimburse them.

The Rule cited by the Petitioner is clear, precise and unambiguous. It states in plain language that when camp cars are occupied by 5 or more men living in the cars, a cook or an employe to cook will be provided, and if not provided, the men will be allowed actual necessary expenses. It is well to note that the word **provided** is used in this rule and not the word **assigned**. This is precisely what was done in the instant case. A cook was provided and although assigned to another gang, which incidentally was working on a common project with Claimants B&B gang, satisfied the requirements of the rule. This is not an unusual situation, arguments advanced by the Organization to the contrary notwithstanding, since rules 6 and 7 of the Agreement contemplate temporary transfers from one seniority district to another. The rule does not state that a cook must be from the same seniority district as the B&B gang being fed. Award 14117 (Harr), upon which Petitioners rely, is readily distinguishable from this case. There, the issue simply was whether the expenses were actually necessary, whereas here, the issue involves the question of providing a cook, two entirely different situations. For the foregoing reasons, we will deny the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 7th day of June 1968.