



Award No. 18259
Docket No. MW-18622

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BURLINGTON NORTHERN, INC.
(Formerly Chicago, Burlington & Quincy Railroad Company)

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

(1) The Carrier violated the Agreement when it allowed B&B employees L. C. Wieczorek, L. J. Richardson, R. L. Johnson, S. M. Seroka and H. C. Knodle a meal allowance of two (2) dollars per day instead of three (3) dollars per day for each day during the period between September 26 and October 25, 1968, both dates inclusive. (System File 11-3/M-1286-68.)

(2) B&B employees L. C. Wieczorek, L. J. Richardson, R. L. Johnson, S. M. Seroka and H. C. Knodle each be allowed an additional one (1) dollar for each day within the aforementioned period because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants are the foreman and members of B&B Gang No. 4. They are employed in a type of work the nature of which requires them throughout their work week to live away from home in outfit cars and, therefore, they are entitled to receive a daily meal allowance in accordance with the provisions of Rule 59 which, insofar as it is pertinent hereto, reads:

"OUTFIT CARS - LODGING - MEALS

The company shall provide for employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in outfit cars, camps, highway trailers, hotels or motels as follows:

* * * * *

(d) If the railroad company provides cooking and eating facilities and pays the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$1.00 per day.

(e) If the railroad company provides cooking and eating facilities but does not furnish and pay the salary or salaries of neces-

The claimant employees were paid a meal allowance of \$2.00 per day in accordance with Rule 59(e) of the agreement between the parties entered into on February 21, 1968 pursuant to the provisions of Arbitration Award 298, dealing with expenses away from home. Claim is made herein that the cooking and eating facilities provided by the Carrier did not meet the standards set forth in Rule 59(h), and that the claimants were, therefore, entitled to the \$3.00 per day allowance stipulated in Rule 59(f).

Rule 59, just referred to, and other rules not pertinent to this particular dispute, are included in a Memorandum of Understanding entered into by the parties to this dispute on February 21, 1968, pursuant to the option of the Employees to elect to adopt Sections I and II of Arbitration Award 298. A copy of this Memorandum of Understanding is attached hereto as Carrier's Exhibit No. 1.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the Organization's claim that employees were improperly compensated under the provisions of Rule 59 of the current agreement when they were given \$2 instead of the claimed \$3 as meal allowance.

They had received the allowance of \$3 for a period beginning February 21, 1968, and ending on October 28, 1968, when Carrier's officer advised the car was properly equipped.

Rule 59 (h) provides, in part:

"If kitchen facilities are provided, cars will be equipped with oil or gas cooking stoves, refrigerators, utensils and dishes in proportion to the number of men to be accommodated."

There is one simple question. Did the Carrier properly outfit the car, as required by the cited Rule?

We can only conclude from the record that it did not. The Organization's presentation, we find, meets the requirement of their burden of proof.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1970.

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