

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company that:

(a) Mr. J. W. Powers and Mr. M. M. Thomas be paid the actual necessary lodging expenses of \$6.18 per night, July 29, and 30, 1968, or a total of \$12.36 each.

(b) Mr. J. O. Rowes be paid for use of his automobile in obtaining lodging for 236 miles at 10 cents or \$23.60, as result of camp car not available. In addition thereto, be paid travel time outside his regular assigned hours on the basis of two (2) minutes per mile traveled, at his pro rata rate.

(c) Mr. G. C. Williams be paid for use of his automobile in obtaining lodging for 316 miles at 10 cents or \$31.60, as result of camp car not available. In addition thereto, be paid travel time outside of his regular assigned hours on the basis of two (2) minutes per mile traveled, at his pro rata rate.

(d) Mr. H. A. Blume be paid for use of his automobile in obtaining lodging for 268 miles at 10 cents or \$26.80, as result of camp car not available. In addition thereto, be paid travel time outside his regular assigned hours on the basis of two (2) minutes per mile traveled, at his pro rata rate.

(e) Mr. H. C. Creel, Jr. be paid for use of his automobile in obtaining lodging for 96 miles at 10 cents or \$9.60, as result of camp car not available. In addition thereto, be paid travel time outside his regular assigned hours on the basis of two (2) minutes per mile traveled, at his pro rata rate.

(f) Mr. J. T. Mitchum be paid for use of his automobile in obtaining lodging for 240 miles at 10 cents or \$24.00, as result of camp car not available. In addition thereto, be paid travel time outside his regular assigned hours on the basis of two (2) minutes per mile traveled, at his pro rata rate. [Carrier's File: 15-56.]

There is no question in my mind and I feel that in all honesty and sincerity, there is no question in the mind of any of the persons present at the conference, but that the Memorandum is not being applied as was clearly understood."

Inasmuch as the provisions of the Memorandum Agreement of June 17, 1968 are clear and unambiguous, Carrier will not burden the record by reproducing the various proposals made in negotiations prior to that agreement being executed, as referred to in the letter of July 7, 1969 to Vice President Gegg.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute herein involves Memorandum of Agreement dated June 17, 1968, which reads in part:

"In the accomplishment of the Option set forth in Section V of Award of Arbitration Board No. 298, the parties signatory hereto agree to apply said Award, effective October 15, 1967, as follows:

I. For employes 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 camp cars, camps, highway trailers, hotels or motels, the railroad company shall provide:

A. Lodging.

1. If lodging is furnished by the railroad company, such lodging furnished shall include bed, mattress, pillow, bed linen, blanket, towels, soap, washing and toilet facilities.

(NOTE: Exception to this paragraph 1 for camp cars is as specified in Rule 56.)

2. Lodging facilities furnished by the railroad company shall be adequate for the purpose and maintained in a clean, healthful and sanitary condition.

3. If lodging is not furnished by the railroad company the employes shall be reimbursed for the actual reasonable expense thereof not in excess of \$4.00 per day.

B. Meals.

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

2. If the employes are required to obtain their meals in restaurants or commissaries, each employe shall be paid a meal allowance of \$3.00 per day.

3. The foregoing per diem meal allowance shall be paid for each day of the calendar week, including rest days and

holidays, except that it shall not be payable for work days on which the employe is voluntarily absent from service, and it shall not be payable for rest days or holidays if the employe is voluntarily absent from service when work was available to him on the work day preceding or the work day following said rest days or holiday.

* * * * *

II. With respect to Section II of the Arbitration Award the employes elect to retain provisions of existing rules of the working agreement. It is understood that Rules 18, 19 and 25 thereof shall continue in effect for employes sent away from home station."

The Claimants herein were assigned to Signal Gang No. 1. The camp car outfit, to which they were assigned, was moved over the weekend of July 25-28, 1968, from Darlington, S. C., to Yemassee, S. C. All the camp cars were at Yemassee on Monday morning, July 29, except the sleeping car, which it had been necessary to cut out at Florence, S. C., for repairs. On July 29 the foreman of the gang was advised by the Assistant Supervisor of Signal Construction that due to the sleeping car being bad-ordered for repairs, it would be Wednesday, July 31, before it would arrive at Yemassee. The Assistant Supervisor also explained to the Foreman of the gang the provisions of the Memorandum of Agreement of June 17, 1968, under which the employes would make arrangements for their lodging for Monday night and Tuesday night, with reimbursement for the expense thereof not to exceed \$4.00 per day.

The General Chairman of the Organization, on September 16, 1968, filed claim in behalf of Claimants Foreman J. W. Powers and Signal Helper M. M. Thomas for payment of lodging expenses of \$6.18 per night for July 29 and 30, and in behalf of other named employes in the gang for two round trips automobile mileage between Yemassee and their homes to obtain lodging at 10 cents per mile, and travel time for time spent by the employes in making such trips on the basis of two minutes per mile traveled.

The Carrier has contended throughout the handling of the dispute that the provisions of Section I-A-3 of the Memorandum Agreement of June 17, 1968, are controlling. The Petitioner contends that the provisions of Rule 25 - Expenses - are applicable. Rule 25 reads:

"Employes sent away from home station or territory will be reimbursed for actual necessary expenses incurred for meals and lodging.

Employes assigned to monthly rated positions will be allowed expenses as outlined above when away from home station if not provided for by the carrier.

Expenditures of any other kind will not be incurred or reimbursed therefor unless his supervisor instructs him to incur the expense. This rule does not intend the payment of noon-day meal for hourly rated maintenance forces when working on their assigned territory."

From our review of the record, we find that Claimants were employees covered by Section I of the Memorandum Agreement of June 17, 1968, and when lodging was not available, they were entitled to the benefits specifically provided for in Section I-A-3. It is well settled that a specific rule takes precedence over a general rule, and also that an agreement that is plain and unambiguous must be applied according to its terms. The Claimants have been granted the allowance specifically provided for in Section I-A-3 of the Agreement of June 17, 1968, and no further allowance is due.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1971.

DISSENT TO AWARDS NOS. 18496 AND 18497 DOCKETS NOS. SG-18555 AND SG-18723

Award No. 14896, and No. 18497 which follows it, is palpable error and should be disregarded in future disputes between the parties involved.

The Memorandum of Agreement of June 17, 1968 controls in the payment of expense allowances and travel time to all of the Carrier's Signal Department 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 camp cars, camps, highway trailers, hotels or motels. That it applies only to these employees is established by the first sentence of Section II of the Agreement which rejects Section II of the Award of Arbitration Board 298 [Section II of the Award covered "Employees (other than those referred to in Section I * * *) who are required * * * to be away from their headquarters point * * *."] Hence, it is inescapable that the present Agreement covers those, and only those employees described in its Section I, and when the parties said in Section

II that Rules 18, 19 and 25 of the working Agreement shall continue in effect for employes sent away from home station, they were referring to those employes embraced in Section I.

It being shown that the Memorandum provides benefits only for those employes set out in its Section I, and that all of the rules of the working Agreement were preserved to other employes by the first sentence of Section II, the holding of the Majority is that the parties performed a useless act in writing the second sentence of Section II because there is no one left to whom it could apply. We have consistently held that to so interpret an agreement is improper.

Awards Nos. 18496 and 18497 are palpable error, and I dissent.

W. W. Altus, Jr.
Labor Member

**CARRIER MEMBERS' ANSWER TO DISSENTS TO AWARDS
NOS. 18496 AND 18497, DOCKET NOS. SG-18555
AND SG-18723**

The dissents consist in the main of a rehash of the arguments previously advanced by the Organization and the dissenter, all of which were fully considered and found lacking by the majority. Repetition does not add validity to the arguments.

Awards 18496 and 18497 and the records on which they are based stand as the best refutation of the views of the dissenter. The awards are not erroneous, and the dissents do not make them so, nor do the dissents detract from the awards.

P. C. Carter
R. E. Black
H. F. M. Braidwood
W. B. Jones
G. L. Naylor