Award No. 18577
Docket No. MW-18838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 reduced the meal allowance of the members of B&B Gang No. 1 on the Creston Zone of the Ottumwa Division from three (3) to two (2) dollars per day. (System file 16-3/M-1334-69).

(2) Foreman G. J. Long, Mechanics K. W. Key, V. C. Hultquist, M. A. Graves and Helper R. B. Vail each be allowed an additional one (1) dollar per day for each day that they are assigned to said gang or until their outfit cars are adequately equipped with cooking and eating facilities.

EMPLOYES' STATEMENT OF FACTS: The claimants are the foreman and members of B&B Gang #1. 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 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 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 employe 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

on February 21, 1968 pursuant of 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 Employes to elect to adopt Section 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: Kitchen car 212345 was assigned to Gang No. 1 beginning January 30, 1969, and was equipped with stove, refrigerator, utensils, dishes and cutlery. A meal allowance of $2.00 per day was paid Claimant employes in accordance with Rule 59(e) of the Agreement pursuant to provisions of Arbitration Award 298 pertaining to expenses away from home. The Organization contends that the Kitchen car did not meet the standards set out in Rule 59(h) and were therefore entitled to $3.00 per day allowance as set out in Rule 59(f). Carrier contends that this Award should be denied for the reason that Claimants did actually eat in outfit cars; that this Board is without jurisdiction to interpret Award of Arbitration Board No. 298 which is required in order to resolve this dispute; and that the Organization has failed to show that the facilities were not adequate.

The record discloses that the outfit car in question was not equipped as required in Rule 59(h). The record is abundant with probative evidence that the outfit car did not provide "an adequate supply of water suitable for drinking and other domestic uses" as required by Rule 59(h). The allegation concerning other inadequacies (pots, pans, dishes, knives, forks, etc.) is wholly without merit. Carrier had on hand at least a skeleton inventory of equipment and furnished money with which to complete the inventory. By not objecting as to the amount of money furnished, it must be assumed that the amount was adequate.

The Organization also contends that the argument of Carrier that this Board has no jurisdiction to interpret Board of Arbitration Award 298 was not raised on the property, and, therefore, cannot be argued befoe this Board. This contention is without merit. Jurisdictional question may be raised and considered at any stage of the proceedings. See Awards 8886 (McMahone), 16786 (Zumas), 12223 (Dolnick) and others.

In carefully considering the jurisdictional question involved in this dispute, this Board finds that Awards 17845 (Dolnick) and 18485 (Rosenbloom) are controlling. By and under authority of these Awards, Arbitration Board No. 298 has exclusive jurisdiction to rule on any difference arising as to the meaning of its (Arbitration Board No. 298 Award. Had the jurisdictional question not been raised, the result would probably have been different. However, this Board is limited in its power to the consideration of disputes within its jurisdiction conferred under the Railway Labor Act. Also, under the same Act, Arbitration Board 298 is clothed with the final power to determine the controversy. See Brotherhood of Railroad Trainmen vs. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 248 Fed. Supp. 1008 and Section 157 of Title 45, U.S.C.A., Par. 3rd. Subsection (c).

For the foregoing reasons, this dispute will be dismissed.

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.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1971.

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