



Award No. 19075

Docket No. SG-19305

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District):

On behalf of Signal Foreman R. P. Parr; Signalmen S. D. Helper and Gordon S. Hockett; Assistant Signalmen T. L. Breeden and B. Y. Swift, Jr., for the \$4.00 lodging and \$3.00 meal allowances of the February 15, 1968 Agreement account Carrier established a gang without camp cars at Scottsville, Virginia, for the period September 27 to October 31, 1969. (Carrier's File: 1-SG-277)

EMPLOYEES' STATEMENT OF FACTS: Arbitration Board No. 298 was constituted and established pursuant to an Agreement between certain Railroad Labor Organizations, including the Brotherhood of Railroad Signalmen, and the National Railway Labor Conference representing certain Carriers including the Chesapeake and Ohio Railway Company. On September 30, 1967, that Arbitration Board adopted an Award which is by reference made a part of the record herein.

Article V of Arbitration Board No. 298 Award afforded the organization parties the option of accepting any or all benefits provided in the Award, or continuing in effect any or all provisions of the existing schedule agreement.

Pursuant to the Award of Arbitration Board No. 298, on February 15, 1968, Carrier's Assistant to Vice President-Labor Relations, and the Brotherhood's representatives agreed that there be added to the current agreement a new rule which in effect implemented certain provisions of the Award. This Rule is reproduced and attached hereto as Brotherhood's Exhibit No. 7.

On September 27, 1969, Carrier established a Signal Gang at Scottsville, Virginia, comprising one (1) Signal Foreman, two (2) Signalmen, and two (2) Assistant Signalmen.

The assignees to the gang positions are employed in a type of service, the nature of which regularly requires them throughout their work week to live in camp cars, camps, highway trailers, hotels or motels.

Assistant Signalman—Awarded to **Thomas R. Breeden**, who was formerly assigned as Signal Helper, with headquarters point at Gordonsville, Virginia; and

Assistant Signalman—Awarded to **Boyd Y. Swift, Jr.**, who was formerly assigned as Signal Helper with headquarters point at Richmond, (R Cabin) Virginia.

Copies of the three bulletins advertising the above positions and the addenda to the bulletins awarding the positions are attached and marked for identification as **Carrier's Exhibit 4**.

The employees awarded these positions are the Claimants in this case.

The work performed by this district signal gang established with Scottsville, Virginia, as the central headquarters point, was the restoration of certain of the signal and interlocking facilities and equipment damaged or destroyed by the flooding. Similar work was performed by the System Signal Gang that was brought in on the district. The restoration work was completed to the extent that the System Signal Gang was removed from the Division on October 3, 1969. The district signal gang completed the restoration and the force was abolished on October 31, 1969.

The Claimants, all members of the district signal gang, filed claim for "\$4.00 lodging and \$3.00 meal allowance of the February 15, 1968 Agreement account Carrier established a gang without camp cars at Scottsville, Virginia, for the period September 27 to October 31, 1969."

In handling on the property and in conference, it was the position of the Organization that the district signal gang could not be established at Scottsville, Virginia, without the providing of camp cars or if camp cars were not provided, the Carrier was required to pay \$4.00 per day for lodging and \$3.00 per day for meals during the period of the claim under the provisions of the February 15, 1968, implementing agreement and Award of Arbitration Board No. 298.

The Carrier's highest officer designated to handle claims denied the instant claims by letter dated April 2, 1970, and reaffirmed that decision instant claims by letter dated April 2, 1970, and reaffirmed that decision by letter dated July 20, 1970, which are Carrier's Exhibits 5 and 6, respectively.

The history and factual development of the matter having been set forth, the Carrier will now proceed to outline and discuss its position in this case.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 27, 1969, Carrier established a District Signal gang with headquarters at Scottsville, Virginia, which gang was brought in to repair damage to signal and interlocking facilities caused by extensive flood damage. The gang's personnel was the Claimant's whose positions were abolished October 31, 1969. Carrier failed to provide camp cars for the gang to live in, nor did it provide lodging or eating facilities for them. The Claimants filed claim for \$4.00 lodging and \$3.00 meal allowance pursuant to the February 15, 1968 Agreement in effect on the property, account Carrier established a gang without camp cars at Scottsville, Virginia for the period September 27 to October 31, 1969.

The the outset, Carrier alleges that this Board is without jurisdiction to pass on the merits of the present claim since Arbitration Board No. 298 has exclusive jurisdiction to rule on any difference arising as to the meaning of its Award. However, the issue raised by the within claim involves the interpretation of the implementing Agreement of February 15, 1968, and not an interpretation of Arbitration Award No. 298. This distinguishes the claim from Awards 18577, 18578, 18485, 18813 and others relied on by Carrier in support of its contention. Thus, we have jurisdiction to adjudicate the claim on its merits.

We are of the opinion that the February 15, 1968 Agreement is applicable here, and thus we must decide whether Claimants were employees within the purview of that Agreement. Section 1 of the Agreement reads, in part:

"I. The railroad 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 camp cars, camps, highway trailers, hotels and motels as follows: . . . (here the \$4.00 lodging and \$3.00 meal provisions are found)."

All the Claimants except Swift lived at home and all the work was performed in the vicinity of Scottsville, the headquarters point. The gang was not required to move from project to project as work requirements were needed, nor were they required to live in camp cars etc. away from home. They reported at Scottsville daily and performed work in the vicinity thereof.

Before the \$4.00 lodging and \$3.00 meal allowance provisions of the February 15, 1968 Agreement became applicable, there is a clear, unambiguous criteria that must be met, to wit, the employees must be "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, and motels etc." Failure of the employees to do so, precludes recovery of the \$4.00 lodging and \$3.00 meal allowance. Since Claimants were not so engaged in a type of service the nature of which required them throughout their work week to live away from home in camp cars etc., they are not entitled to the lodging and meal expenses provided for by the February 15, 1968 Agreement.

This fact distinguishes the present claim from the claims involved in Awards 18596, 18597, and 18598, since there the service claimants were involved in required them to regularly throughout their work week live away from home.

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 10th day of March 1972.

Dissent to Award 19075, Docket SG-19305

Award 19075 errs.

It is significant that the Majority has not found Awards 18596, 18597 and 18598 to be in error; it is only contended that they are distinguishable from the present case. We do not agree.

The determining factor in both cases was whether the Claimants were those covered by Section I of the Award of Arbitration Board No. 298. That Board's Interpretation No. 12 sets out the criterion for making the determination. The Referee in Awards 18596, 18597 and 18598 correctly followed that interpretation; the Majority here did not.

Since Award 19075 is in error, I dissent.

W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member