

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19239
Docket Number MW-19337

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the Agreement when it refused to reimburse Mr. E. W. Leedy for the actual expenses he incurred for meals and lodging for the months of January and February, 1970 (System File D-5767/A-9129 E. W. Leedy Unit G - No. 947).

(2) The Carrier now be required to pay Mr. E. W. Leedy the amount of \$63.60 which represents the difference between the actual meal and lodging expense he incurred during January and February, 1970 and the amount of reimbursement remitted to him by the Carrier.

(3) The Carrier shall also pay the claimant six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

OPINION OF BOARD: Claimant, an Autojack Electromatic Tamper operator was unable to use the outfit car, because it was not in habitable condition, and had to arrange for his own meals and lodging. He claims actual necessary expenses for a period during part of January and part February 1970. Carrier paid \$7.00 per day expenses as provided by Arbitration Award No. 298.

In a Letter Agreement dated May 23, 1940 and revised on April 1, 1951 and June 28, 1955 the parties provided for actual and necessary expenses for Jackson Multiple Tamper operators. Autojack Electromatic Tamper operators are not listed among the classifications covered by the Letter Agreement. On October 1, 1964 the Letter Agreement was further amended to include Autojack Electromatic Tamper Operators in Section 2, which deals with manning and rates of pay. That classification was not added to Section 6, however. Section 6 is the section which provides for the payment of actual and necessary expenses for named classifications.

Carrier's position is that, since Claimant's classification is not specifically listed among those classifications receiving expenses an award, sustaining the claim, would amount to an addition to the Agreement by the Board. Claimant relies on the conceded similarity between the two classifications, and on evidence that Carrier's present practice is at variance with its prior practice.

The record contains bulletins listing the position of Tamper Operator. They show that the successful applicant will be "on expenses". From this Claimant argues that a practice, binding on Carrier, has been established. Practice is, of course, correctly and frequently used to assist in the interpretation of an Agreement. Where, as here, it is at variance with express words in the Agreement it is necessary to proceed with caution and only, if at all, upon the most compelling evidence.

The record in this case does not contain evidence with sufficient weight to permit the interpretation sought by Claimant. The Agreement lists those classifications which are to be paid actual necessary expenses. Claimant's classification is not one of them. The parties could very easily have included the Autojack Electromatic Tamper classification in Section 6 of the Letter Agreement at the time they added it to Section 2 of said Agreement. They did not do so and the Board will not do it for them.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1972.