NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19945
Docket Number MW-19142

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Chicago, Milwaukee, St. Paul and Pacific Railroad Co.

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

(1) The Carrier violated the Agreement when it refused to allow the members of Extra Gangs 3519 and 3645 a daily meal allowance of $3.00 per day and to reimburse them at the rate of $4.00 per day for lodging expenses (System Files 34/D-1676; 36/D-1675).

(2) The members of Extra Gangs 3519 and 3645 each be allowed $7.00 per day beginning on June 9, 1969, for each day that they are assigned to said gangs because of the violation referred to within Part (1) of this claim.

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

OPINION OF BOARD: Claimants are the regularly assigned members of Division Extra Gangs 3519 and 3645. The gangs have customarily been established for a period of three to six months duration each year and, traditionally, have been assigned to camp cars. Meals were made available in the camp cars on a cooperative basis in some instances and, when not available, the employees prepared their own meals or ate in restaurants. In 1968 the Carrier provided meals and lodging in camp cars and paid a meal allowance of $1.00 daily to each employee in the gangs. In June 1969, the Carrier established the gangs without camp cars and designated Jefferson Island and Tarkio, Montana as their headquarters. The nearest points at which lodging and meals were available were 15 miles distance from each headquarters point. Claimants contend they are entitled to $4.00 daily as lodging allowance, and $3.00 daily as meal allowance.

On May 25, 1972, pursuant to a request by the Organization, Arbitration Board No. 298 rendered the following interpretation concerning Extra Gangs 3519 and 3645;

"INTERPRETATION NO. 75 (Question No. 2; BMWE and CMST.P&P)

QUESTION: Can the Carrier avoid granting the employees in Division Extra Gangs 3519 and 3645 the benefits provided in Sections I-A-3 and I-B-3 of the Award by removing them from camp cars and by designating a headquarters point where meals and lodging are not available?

"ANSWER: The facts in connection with this case indicate that the Carrier discontinued the use of camp cars and designated headquarters points at locations where absolutely no lodging or meals were available within 15 miles. Such inequitable handling was not contemplated by the Award; and under the particular facts and circumstances of this case, the question must be answered in the negative."

The Carrier contends that the Board lacks jurisdiction over the claims because (1) the Petitioner failed to cite the rules relied upon during handling on the property and (2) the determination of the claims requires interpretation of the Award of Arbitration Board No. 298. Carrier further contends that the claims should be denied or dismissed on the merits.

With regard to the Carrier's first contention, we note that the Organization's September 12, 1969 letter to Carrier stated the following:

"Mr. Prata states that 'claim is not supported by scheduled rules or agreements'; we disagree with this statement as Award 298 integrated with the schedule rules Nos. 26, 27 and 34 of the Maintenance of Way Schedule supports the claim as do the interpretations of Award 298."

We believe the foregoing evidences a sufficient recitation of rules relied upon by Petitioner and, thus, we conclude that a claim, alleged on the property to have arisen under Rules 26, 27, or 34 of the Agreement, is properly before us. Nor do we concur with Carrier's contention that this Board's jurisdiction is precluded in that, as Carrier puts it, the Petitioner seeks an interpretation of the Award of Arbitration Board No. 298 and that this is a matter within the exclusive jurisdiction of Arbitration Board No. 298. (See paragraph 14 of Agreement to Arbitrate, dated May 10, 1966, for the basis of Carrier's jurisdictional objection.) The basic reason for our view is that, in rendering Interpretation No. 75, Arbitration Board No. 298 fully carried out the function vested in it by the May 10, 1966 Agreement to Arbitrate which led to the Award of Arbitration Board No. 298. Yet, from the face of Interpretation No. 75, it is self-evident that Arbitration Board No. 298 did not decide the monetary claim which is before this Board. That claim, which is for particular claimants, for particular dates, and under specified rules of the Agreement, was neither expressly nor impliedly dealt with in Interpretation No. 75 and we believe that determining such a claim is within the jurisdiction of this Board. In addition, a recent Board decision has ruled adversely to a Carrier on essentially the same facts as those underlying the jurisdictional objection in this dispute. In Third Division Award 19075 (O'Brien), this Board stated:

"At 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."

In the foregoing Award the Board was called upon to determine a claim predicated upon the implementing Agreement of February 15, 1968; here, the Board is called upon to determine claims arising under Rules 26, 27, or 34 of the Agreement between the parties. In each case the claim arises under provisions which the parties themselves agreed to and the mere fact that such provisions derived from the Award of Arbitration Board No. 298 does not serve to erect a bar to this Board's jurisdiction. This is not to say that jurisdiction is conferred by the mere existence of an agreement or rule implementary of the 298 Award. See, for example, Award 19704 (this Referee) where jurisdiction was lacking because the Board found that despite the Petitioner's "reference to 'various provisions' of the Agreement", the record showed that "the only issues joined by the parties concern the interpretation of Arbitration Award 298." The central fact here is that the Board is asked to determine whether a specific monetary claim is supported by specific rules of the Agreement between the parties. In doing so, it would appear that this Board is carrying out a function entirely different than the one performed by Arbitration Board 298 and, consequently, we are not intruding into areas of exclusive concern to the Arbitration Board.

With regard to the merits, we concur with Carrier's argument that Rules 26 and 27 of the Agreement have no application to this dispute. Apparently, Petitioner also concurs because these Rules are not mentioned at all in its submission or reply to Carrier's submission. But contrary to Carrier's position, we believe Rule 34 does support the claim for meal allowances. This rule, in pertinent part, reads as follows:

"RULE 34 - CAMP CARS, HIGHWAY TRAILERS, ETC.

(a) The railroad 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 camp cars, camps, highway trailers, hotels or motels as follows:

* * * * * * *

"(e) If the employes are required to obtain these meals in restaurants or commissaries, each employe shall be paid a meal allowance of $3.00 per day.

(f) The foregoing per diem meal allowance shall be paid for each day of the calendar week, including rest days and holidays, except 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 where work was available to him on the work day preceding or the work day following said rest days or holiday."

From the record it is clear that Claimants are employed in the type of service described in (a) above and, hence, they are covered by the rule. It is also patently clear that paragraph (e) of Rule 34 became applicable when Carrier placed the headquarters 15 miles away from the nearest food provisions, and Carrier's refusal to pay the prescribed meal allowances violated the rule. Consequently, and consistent with the aforementioned Interpretation No. 75, we shall sustain the claim to the extent of the meal allowances. However, the Petitioner has not shown agreement support for the lodging allowances. The record shows that, in the election process following the rendering of the Award of Arbitration Board No. 298, the Petitioner elected to reject Section 1-A-3 of the Award relating to lodging allowances. The Petitioner says this rejection resulted from its decision to retain Rule 28 of the Agreement in preference to the provisions of Section 1-A-3. And Rule 28 is indeed the Rule upon which the Petitioner relies in its submission argument for lodging allowances. However, the record shows that Rule 28 was never raised on the property and, hence, the merits of the claim for lodging under Rule 28 are not properly before us. Consequently, we shall dismiss the claim for lodging allowances as not having any agreement support in the record before us.

FINDINGS: The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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; and

The Carrier violated the Agreement to the extent indicated in the Opinion.

A W A R D

The claim is sustained to the extent of the claim for meal allowances; in all other respects, the claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.