NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19946
THIRD DIVISION Docket Number MW-19326

Frederick R. Blackwell, Referee

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

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

(1) The Carrier violated the Agreement when it allowed the members of Extra Gang 2428 a daily meal allowance of $1.00 per day instead of $3.00 per day (System File 37/D-1687).

(2) The claim* presented by Assistant General Chairman R. O. Chambers on July 23, 1969, to Roadmaster F. Hilt should be allowed, as presented, because it was not disallowed by Roadmaster F. Hilt in accordance with the provisions of Article V of the National Agreement dated August 21, 1954.

(3) The members of Extra Gang 2428 each be allowed an additional $2.00 per day beginning on June 2, 1969 because of the violation referred to within Part (1) of this claim.

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

*The claim, as presented, reads as follows:

"1. That the Carrier violated and continues to do so, the effective schedule and agreements by not allowing the proper meal allowance for employes in Gang 2428 or known as Frost' gang, General Foreman J D Frost.

2. That the following named machine operators, foreman, Asst. foreman, and laborers: DL Granot, KF Maher, TH Forsting, KE Frost, E. Gronlund, RE Larson, RE Miller, GB Youngman, CI Jacobson, JL Carter, DL Brabazon, RD Lyson, AP Wilkes, JG Wilkes, TR Crawford, DJ Jensen, NJ Brentrap, AR Heupel, TK ODonnell, RR Sauter, H Frost, MB Lien, RT Catchpole, AW Gunther, GC Ensign, DD Layton, RL Roller, RR Buntrup, DJ Denhne, BG Seiler, HC Frosting, TA Lacey, AL Roller, WO Thompson, DL Wanner, DL Schatzke, RR Kivinagi, DD Goetz, LD Stanley, DG Brumley, GL Utter, DE Karges, DD Fossen, CE Kellison, JH Aitken, WA Miller and all laborers on record of Gang 2428 on company's payroll

"be paid the difference between three ($3.00) dollars per day meal allowance and the one ($1.00) per day meal allowance that has been allowed from June 2, 1969 until such violation stops and the proper allowance is paid.

3. The carrier shall also pay the claimants six (6%) per cent interest per annum on the monetary allowance accruing from the initial claim date until paid."

OPINION OF BOARD: Claimants are members of Extra Gang 2428 which is headquartered in camp cars wherein meals and lodging are provided. Prior to this dispute each member of the gang paid for meals by a system under which the total number of meals served to all employees was divided into the total cost of all food purchases. The unit cost per-meal thus obtained was then applied to the number of meals served to each employee to obtain his actual food costs; the end result was that each employee paid for food actually eaten by himself and on an actual cost basis. Petitioner says this system was changed to one under which each employee was required to pay $3.75 daily for meals regardless of the total cost of food purchases or the number of meals taken by each employee. Under both systems the Carrier paid the salary of the cook and paid each employee a $1.00 daily meal allowance. The Petitioner says that, under the latter system, the camp cars became a commissary which entitled claimants to a greater meal allowance than the Carrier paid.

Petitioner asserts that this claim, together with interest, is payable under time limits provisions and also under Rule 34 (e) of the Agreement. Carrier's position is that the Board lacks jurisdiction of the claim because (1) there was no conference on the property and (2) the claim involves the Award of Arbitration Board No. 298. Carrier also asserts that the claim for interest amounts to a request for a new rule and should be dismissed.

We shall consider Carrier's jurisdictional objections first, because a jurisdictional bar would preclude consideration of Petitioner's time limits arguments as well as its case on the merits.

With regard to the conference issue, the Carrier's Submission states that its "records" do not reveal that a conference was either requested by the Organization or that one was held on the property. However, the record shows that the cover page on the Petitioner's file on this claim contains a notation of "conf 3-19-70". From this document we are satisfied that a conference was held on the property and that the conference issue poses no bar to our consideration of the claim.

We come now to Carrier's second jurisdictional issue concerning the Award of Arbitration Board No. 298. On May 25, 1972, pursuant to a request by the Organization, Arbitration Board No. 298 issued the following interpretation:

"INTERPRETATION NO. 59 (Question No. 1; BMWE and CMSt.P&P)

QUESTION: Are employes covered by Section I of the award entitled to a meal allowance of one dollar a day or to a meal allowance of three dollars a day under the following described conditions:

(1) Cooking and eating facilities are provided by the Carrier

and

(2) The Carrier furnishes and pays the salary of the cook

but

(3) The food staples are purchased and supplied by the general foreman or roadmaster

and

(4) The general foreman or roadmaster requires each employe to pay a fixed daily charge for meals as opposed to pro-rating the cost of the food staples as in the case of cooperative boarding.

ANSWER: Under the circumstances cited, the employees are entitled to a meal allowance of $1.00 a day but the Carrier must instruct its general foreman or roadmaster to purchase the food and account for the actual cost of the food and pro-rate the cost among the participating employees."

As we pointed out in Award 19945, which involved this same jurisdictional objection, the foregoing interpretation does not purport to have adjudicated the monetary claim in the dispute submitted to this Board. That claim, which involves particular claimants and particular dates, has never even been submitted to Arbitration Board No. 298. Furthermore, the claim here is predicated on Agreement rules agreed to by the parties, and not upon the Award of Arbitration Board No. 298. The mere fact that such rules derive from the Award does not bar the jurisdiction of this Board to determine a claim predicated on such rules. Award 19075 (O'Brien). See also Award 15940 (Heskett). Accordingly, and for the reasons more fully discussed in Award 19945, we conclude that this claim is properly before this Board.

The facts concerning Petitioner's time limits argument are as follows: The General Chairman wrote to Roadmaster Hilt on July 23, 1969 to file the claim, and on November 19, 1969 to invoke time limit sanctions under Article V of the August 21, 1954 Agreement on the ground that Roadmaster Hilt had not made any response to the claim within prescribed time limits. The General Chairman then wrote to Superintendent Martin on January 6, 1970, stating that Roadmaster Hilt had made no reply to the July 23 and November 19 letters and that the claim was payable under time limit provisions of Rule 47-1(a) and Article V, August 21, 1954 Agreement. On February 15, 1970, Superintendent Martin replied to the General Chairman, stating that Rule 47 does not apply to an invalid claim and that the claim was not supported by schedule rules and/or agreements. On these facts we can but conclude that, by not denying within 60 days the claim set forth in the General Chairman's July 23, 1969 letter, the Carrier violated the applicable time limit provisions. Accordingly, and since the claim is a continuing claim, we shall sustain the claim to the date of Superintendent Martin's first denial on February 15, 1970. Award 18004.

The remainder of the claim will be determined upon the merit of Petitioner's contention that the changed system rendered the camp cars a commissary and that, in consequence, claimants became entitled to a meal allowance of $3.00 daily under Rule 34 of the Agreement. In pertinent part, Rule 34 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:

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(c) If the railroad company provides cooking and eating facilities but does not furnish and pay the salary or salaries of necessary cooks, each employe shall be paid a meal allowance of $1.00 per day.

(d) If the railroad company provides cooking and eating facilities but does not furnish and pay the salary or salaries of necessary cooks, each employe shall be paid a meal allowance of $2.00 per day.

(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."

The quoted paragraphs (c), (d), and (e) of Rule 34 afford the Carrier three mutually exclusive options for dealing with meals for employees covered by Rule 34. There is no dispute in this case that claimants are covered by the Rule. Also, it is not disputed that Carrier provided cooking and eating facilities and, in addition, paid the cook's salary and $1.00 daily meal allowance to each covered employee. Carrier has thus complied with paragraph (c) of the Rule and there is no basis for concluding that Carrier should have instead complied with paragraph (e).

We shall sustain the claim as presented on time limits through February 15, 1970, but, otherwise, and consistent with the aforementioned Interpretation No. 59, the claim is denied.

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

That the time limits provisions of the Agreement were violated.

A W A R D

Claim sustained as presented on time limits through February 15, 1970, but, otherwise, the claim is denied.

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.