NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20286
Docket Number SG-20111

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company:

On behalf of Signal Maintainer J. D. Schmeling for mileage expense of 9¢ per mile for the use of his private automobile in making weekend trips home during August 1971 as follows:

22:	Miles City, Montana, to Mobridge, South Dakota --292 miles.	$26.28
27:	Mobridge, South Dakota, to Miles City, Montana --292 miles.	26.28
30:	Miles City, Montana, to McLaughlin, South Dakota--262 miles.	23.58

/Carrier's File: F-1080-2/

OPINION OF BOARD: Claimant seeks reimbursement for mileage expenses incurred during August, 1971, at 9¢ per mile, incident to making weekend trips to and from his home to his assigned camp trailer. No free carrier transportation was furnished or available.

Claimant relies upon Rule 25(a):

> "RULE 25. (a) When the majority of the employes in a crew elect, and conditions permit, they may make weekend trips to their homes. Assigned time lost account making such trips will not be paid for; however, men may make up such lost time either before or after making such trips, outside of regular hours of assignment as directed by the Management at regular rate. When such trips are made, free transportation will be furnished." (underscoring supplied)

Carrier states that the intent and application of Rule 25(a) is to insure free transportation on Carrier's passenger trains, if such is available when employees made weekend trips home. In its submission to this Board, the Organization advises that the original Rule between the Organization and this Carrier stated that free transportation would be furnished "consistent with regulations." The Organization

states that in 1938, the above quoted words were deleted and accordingly, the words "free transportation" are not encumbered by any limitations which would suggest that the transportation was limited to Carrier's passenger trains.

We are unable to discover that said assertion was considered on the property and is properly before us at this time. In any event, the Organization's contention concerning the deleted words has been rejected by this Board on prior occasions. See, for example, Award 12351 (Yagoda), and the Awards cited below.

The Organization cites a number of Awards holding that if contract language is clear and unambiguous, evidence of past practice is not material to the determination; and that this Board has no authority to change a negotiated provision of an Agreement. We do not dispute the authorities cited by Claimant, but feel that they are not material to a determination of the dispute before us.

Previously, a claim was submitted to this Carrier on behalf of a Signal Foreman for expense reimbursement incurred in February of 1969. That claim was based upon the same Rule 25(a), cited above, and was decided by this Board on April 21, 1972.

In Award 19138 (Franden), the Board noted in denying the Award:

> "It is urged upon this Board that the absence of the words 'consistent with regulations' at the end of Rule 25(a) denotes a broader obligation on the part of the Carrier than was present under the rules interpreted in the above cited cases.
>
> We are not persuaded that the presence or the absence of the words 'consistent with regulations' bears on the proper interpretation of this type of rule. We are inclined to follow the line of cases previously decided by this Board and in so doing hold that they apply to the interpretation of the Rule herein."

We note that Docket SG-20057, decided in conjunction with this Award, made an identical claim for expense mileage for the same Claimant for various dates in July of 1971. This Claimant's request for reimbursement for the month of June, 1971 was submitted,

along with other similar claims, to Public Law Board No. 970.

Before Public Law Board No. 970 (Paul Dugan), the Organization relied on the same Rule 25(a), cited above, and advanced many of the same arguments considered by this Board in this case.

Public Law Board No. 970 considered Award 19138, and cited the same language of that Award that has been cited above.

Public Law Board No. 970 concluded:

> "Finding said Award No. 19138 of the Third Division of the National Railroad Adjustment not palpably erroneous and therefore controlling in the determination of this dispute, the claim is denied."

While it is conceded that reasonable minds could disagree and reach contrary conclusions concerning an appropriate interpretation of Rule 25(a), nonetheless, it appears that various Neutrals have refused to adopt the Organization's view that the absence of the words "consistent with regulations" have a significant bearing on a determination of the dispute. We are confronted with two recent determinations concerning the same Carrier and the same contract language. We are unable to state that those Awards are palpably erroneous. It has long been held by this Board that under those circumstances, the Board should not disturb prior determinations dealing with the same Rule and the same parties.

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; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.