

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20405  
Docket Number MW-20336

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way Employees  
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when it failed and refused to allow Work Equipment Operators John E. Murphy, J. D. Wisdom and A. W. Anstey actual expenses incurred for lodging for the periods listed in the "NOTE" below (System Files 33-R-3/MW-24, 5-1-72; 33-R-3/MW-24, 5-2-72; 33-R-3/MW-24, 5-26-72 and 33-R-3/MW-24, 8-9-72).

(2) Work Equipment Operator John E. Murphy be reimbursed \$55.92, J. D. Wisdom be reimbursed \$75.20 and A. W. Anstey be allowed \$43.74 which represents the difference between actual expenses incurred and the amount of reimbursement remitted to them by the Carrier.

NOTE: John Murphy.....February 27 through March 25, 1972

J. D. Wisdom....March 12 through March 24, 1972

March 27 through April 25, 1972

A. W. Anstey....May 25 through June 23, 1972

OPINION OF BOARD: This claim arises under Rule 37 which, in pertinent part, reads as follows:

RULE 37. EXPENSES--ROADWAY EQUIPMENT OPERATORS AND HELPERS

\* \* \* \* \*

When a roadway equipment operator or helper is unable to return to his headquarters point on any night, he shall be allowed actual expenses on bulletined workdays provided he actually performs compensated service on such days.

If the Company does not provide an outfit car for such employees when they are away from their headquarters point, lodging will be provided by the Company or the employees will be reimbursed for the expenses incurred therefor.

\* \* \* \* \*

It is not disputed that the Claimants are covered by the foregoing text. However, the expense amounts submitted by the Claimants have been reduced by the Carrier. The reason for the reduction is that the Carrier, by bulletin, designated certain lodging facilities as being available to the Claimants at specially reduced rates arranged by the Carrier; the bulletin gave notice that the use of lodgings more expensive than those designated in the bulletin would result in the claim for lodging expense being reduced to the rate of the designated facilities. The Claimants did not use the designated facilities, but used more expensive facilities, whereupon the Carrier carried out its notice that the lodging expense claimed would be reduced to the equivalent of the designated facilities. The claim here is for the difference in the actual outlay by the employees for lodgings and the amount allowed in reimbursement by the Carrier.

The Carrier's Submission states that its arrangement for lodging facilities reserved lodging space for the Claimants and that such reserved space "was just as much Carrier-provided as it would have been had the Carrier built and owned the buildings which housed the hotels." Thus, the Carrier contends that the arrangement complied with the Rule 37 requirement that, in the absence of an outfit car, "lodging will be provided by the Company." Contrarily, the Employees say that, since the Claimants used their own funds to pay for the lodging and received reimbursement on a trailing basis, there is no merit to the Carrier's contention.

Rule 37 refers to three alternate methods by which employees may be lodged when performing compensated service at points away from headquarters: (1) by an outfit car; (2) by lodging provided by the company; or (3) by reimbursement of expenses incurred by employees in obtaining lodging. The rule's use of the disjunctive "or" in reference to reimbursement of lodging expense clearly connotes that methods 2 and 3 are mutually exclusive and, consequently, if one of the methods is present, the other cannot be. Here, it is not disputed that the Carrier's arrangement required the employees to pay for their lodging and then to be reimbursed therefor on a trailing basis. This involvement of the employees' personal funds, even for a brief period, clearly demonstrates that method 3 was followed in this case which, as indicated, necessarily excludes any possibility that method 2 was present. There is nothing wrong with the Carrier making arrangements for reduced lodging rates, in order to reduce its costs whenever possible. However, the arrangement here is not remotely analogous to the provision of lodging in a Carrier-owned building and we conclude, on the whole record, that such arrangement did not amount to "lodging. . . provided by the Company" as such term is used in Rule 37. We shall therefore sustain the claim.

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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.

CARRIER MEMBERS' DISSENT TO AWARD 20405 DOCKET MW-20336

(REFEREE BLACKWELL)

This is just one more award in a long line of clearly erroneous, biased and prejudicial decisions by this Referee. He states:


"The reason for the reduction is that the Carrier, by bulletin, designated certain lodging facilities as being available to the Claimants at specially reduced rates arranged by the Carrier; the bulletin gave notice that the use of lodging more expensive than those designated in the bulletin would result in the claim for lodging expense being reduced to the rate of the designated facilities. The Claimants did not use the designated facilities, but used more expensive facilities \* \* \*".

In sustaining this wholly unwarranted claim, the Referee is, in effect, telling the Claimants that they are not required to comply with any of Carrier instructions - he is telling them that they can rent the Presidential suite at the most expensive hotel in town and his decision is that Carrier must pay for it. Other crafts and classes of employees on this Carrier use the facilities specified in the bulletin referred to by the Referee, without complaint, but the Referee feels that the three Claimants here are better than any other employees and they can thumb their noses at Carrier instructions.

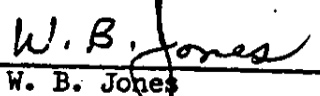
Of course, it must logically follow that such stubborn violation of instructions, defended by this Referee, will certainly not be condoned by Carrier, but will in the future be treated properly by disciplinary measures.

The Award is clearly erroneous, and we must register our most vigorous dissent.

  
G. M. Youhn

  
H. F. M. Braidwood

  
P. C. Carter

  
W. B. Jones

  
G. L. Naylor