

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20545
Docket Number SG-20345

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Central Vermont
Railway, Inc:

In behalf of monthly-rated Maintainers J. F. Reynolds,
L. E. Reed, E. H. Patnode, J. F. Nelson, C. S. Manning, R. R. Boucher,
B. S. Pierce, and R. R. Wheble for noon meal expense money from
March 13, 1972, to April 30, 1972.

[Carrier's File: 8385-6]

OPINION OF BOARD: The named Claimants in the instant case are monthly
rated Signal Maintainers in the employ of Carrier.
On March 9, 1972 Carrier issued an interdepartmental memorandum in
regard to future expense account submissions as follows:

"TO ALL C&S DEPT. EMPLOYEES:

The practice of the Communications & Signals dept. of the
C.V. Railway bearing the cost of noon meals for all classes
of C&S maintenance employees is to be discontinued as of
Monday March 13, 1972. It is our intention to adhere
strictly to rule 19 and rule 43 G of the Agreement between
the Central Vermont Railway and the B R S of A dated
June 1, 1962. These rules make the railway responsible
for expenses only when the employees do not return to
their home station and it becomes necessary to provide
both meals and lodging.

C.J.Mullen

Supvr. C&S"

Thereafter, commencing March 13, 1972 Carrier refused to pay noon meal
expenses submitted by Claimants.

On May 13, 1972 Petitioner herein, on behalf of the named
claimants, claimed expense money for noon meal expenses under Rule 43(g)
of the Agreement. Carrier declined to pay the claims and the matter comes
to us for resolution.

Rule 43(g) reads in pertinent part as follows:

"(g) Where meals and lodgings are not furnished by the Carrier, or when the service requirements make the purchase of meals and lodging necessary while away from home point, employees will be paid necessary expenses.
* * * "

Petitioner alleges and Carrier concedes that for nearly fifty (50) years it has been the continuous and uninterrupted practice for Carrier to reimburse Signal employes for noon meals, irrespective of whether the employe required lodging and/or was held away from home point overnight. Carrier insists however that such payments represented an "erroneous application" of Rule 43(g) which it now seeks to correct by eliminating said practice. Correlatively, Carrier argues that Rule 43(g) clearly and unambiguously requires meal allowances only if the employee also incurs lodging expenses, citing Third Division Award 18971. Notwithstanding able argument by Carrier on this point, we are not persuaded such is the case herein.

Award 18971 is distinguishable from our case in that past practice was not mentioned in that Award, but is at the crux of the instant case. We find Third Division Awards 18267 and 18548 more in point and persuasive. In construing language not dissimilar to that here involved we pointed out that where contractual language is not clear and unambiguous on a disputed point, a long standing, consistent and mutually accepted practice may be deemed controlling. Such clearly is the case before us. Rule 43(g) does not expressly and unambiguously preclude noon meal payments such as are here involved, no more than it expressly required them. But a consistent past practice of paying for such noon meal expenses is, under generally recognized arbitral principles, indicative of the intent of the parties that such payments are mandated by Agreement and cannot be unilaterally terminated. In the circumstances we must 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 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 violated as indicated in the Opinion.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.