

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21089
Docket Number SG-21035

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

In behalf of Southern Division Signalman J. L. Redwine for reimbursement for lodging expenses for the period August 6 through 24, 1973.
/General Chairman file: 2-B-025. Carrier file: 14-760-40-1/

OPINION OF BOARD: Claimant, a regularly assigned Signalman, was stationed at Brenham, Texas. Between August 6 and August 24, 1973, he was assigned as Relief Signal Maintainer at Temple, Texas. During that period of time, Claimant continued to reside in his rented apartment in Temple, Texas. When Carrier refused reimbursement for lodging expenses, Claimant submitted a claim, citing a violation of an April 14, 1972 Letter Agreement:

"(b). A signal gang employe used away from home station to provide vacation relief, while actually providing such vacation relief, will:

(1) be allowed actual necessary meal and lodging expense, such meal and lodging expense allowance being confined to working days of the position protected and on rest days or holidays if held on such days at relief point under provisions of Section 11-(a)-4 of this Article II, but not applicable on any day when the individual lodges or takes meals on signal gang outfit cars, or occupies the living quarters of the employe relieved."

He argues that his home station, during the applicable period, was the camp cars of Southern Division Signal Gang No. 6 (his regular assignment) under the authority of Article II, Section 14:

"Section 14.--Camp cars, as referred to in Sections 8 of Article VIII, will be the home station, as referred to in these Sections, for employes assigned to such cars."

The Organization does not deny that Claimant's lodging expenses remained constant, but argues that the only exceptions to the cited rule occur when the employee is lodged in outfit cars or occupies the living quarters of the employee relieved. Neither of these exceptions are present and, according to Claimant, numerous Awards have held that the inclusion of one or more exceptions in a rule excludes all others.

Carrier has noted that there was no "actual necessary", out of pocket or additional expense incurred under these circumstances and thus the employee is not entitled to any reimbursement.

We do not question the conclusions contained in the Awards cited by Claimant regarding the limitations imposed by stated exceptions. However, in order to reach that question, we must find a compliance with the basic contractual language. The rule reimburses for "...actual... lodging expenses." Here, the Claimant made no lodging expenditures for the days in question except for payment of his normal and regular periodic rent.

We do not find the Awards cited by Claimant in this regard as persuasive, whereas the Carrier's citations are precedential to its position. In Second Division Award 3658, the Board considered agreement language requiring reimbursement for "actual necessary expenses" in a dispute in which the Claimant continued to live at home. The Board felt that the objective of the rule was to reimburse employees put to "additional expense." See, also, Award 12120, which defined "actual" expenses as "out of pocket" expenditures.

While this Board can speculate as to various possible combinations of factual circumstances under the rule, we are, of course, confined to the record before us. The rule refers to "expenses" which must be "actual." Thus, it appears that, in order to prevail, Claimant was required to show a paid out expenditure, and the mere reliance upon a showing of a pro-rated portion of normal monthly rent on his regular place of residence does not suffice.

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;

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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: G. W. Pender
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1976.