NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21218
THIRD DIVISION Docket Number SG-20966

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Robert W. Blanchette, Richard C. Bond and
(John H. McArthur, Trustees of the Property
(of Penn Central Transportation Company,
(Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York, New Haven and Hartford Railroad Company:

Case B.R.S. NH-7

On behalf of the following six employees of the Boston Seniority District for meal expenses as a result of being required to work overtime continuous with their regular tour of duty on November 22, 1972, the meal expenses claimed for 5:30 p.m. and 10:30 p.m.:

W. R. Coulombe:	$2.75 & $2.75.
J. J. Cunningham:	$3.00 & $2.10.
R. D. Millet, Sr.:	$3.00 & $2.50.
R. D. Millet, Jr.:	$3.00 & $2.50.
G. J. Platt:	$3.00 & $2.10.
V. Raspa:	$2.50 & $1.75.

[Carrier File: B.R.S. NH-7]

OPINION OF BOARD: Both parties agree on the basic facts which give rise to this claim. For a number of years the former New Haven, and later the Penn Central, paid a meal allowance for employes who worked overtime, pursuant to Rule 14 of the Agreement. Rule 14 reads:

> "Employes will not be required to work more than ten (10) hours without being permitted to have a second meal period. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes. Subsequent meal periods shall be granted under similar conditions at four (4) hour intervals from completion of previous meal period. This will not apply to employes doubling through on to an immediately following shift in place of another employe. In such event the employe doubling through shall be given the meal period of the employe whose place he is taking."

Carrier's first defense to the claim is that a dispute within the meaning of Section 3, First, subsection, (i) of the Railway Labor Act, does not exist because claim is not "predicated upon any provision of the Signalmen's Agreement." Carrier has taken that position because the employes have recognized that Rule 14 does not contain language which specifically covers the payment of a meal allowance. However, the employes have taken the position that the meal allowance was paid as part of a mutually understood meaning of Rule 14. Clearly a dispute exists over the application and interpretation of the Agreement which is within the jurisdiction conferred upon this Board by the Railway Labor Act.

In their presentation of the case the employes have referred to the parties' Merger Protection Agreement. A large number of cases have held that the proviso in the Merger Protection Agreement means that disputes arising under that Agreement must be referred to the Disputes Committee established for that purpose. There is, however, no reasonable application of the Merger Protection Agreement in this case since it has its origin in the parties' Schedule Agreement.

There is no evidence that any mutual understanding ever took place which resulted in payment of the meal expenses. Carrier, at some point, unilaterally undertook the payment. It is equally clear that Rule 14 does not in any way provide for the payment of meal expense. This is not a case in which the payment came about as a result of a mutually understood and agreed interpretation of ambiguous language. The employes have stated that the payments had been made "without benefits of an actual rule stating that the meals would be paid for." That statement is no more than the admission of an obvious fact, since it is apparent that the employes could not have contended to the contrary, given the language of the controlling Agreement. There is no doubt that the practice has been to pay meal expenses for employes working overtime. It is equally certain that no provision in the Agreement even arguably supports the practice and that Carrier made the payments on a unilateral basis without having reached any understanding with the employes that such payments would be made.

The Board has long recognized that custom and practice can be used to give meaning to ambiguous language since it then shows what the parties themselves have held the language to mean. In this case we are faced with an entirely different application of custom and practice because there is no ambiguous language for the practice to give meaning to. A long series of cases, decided by this Board, have held that Carrier may discontinue a practice which it has begun unilaterally, which is not the result of an understanding with the employes, and where such practice is not supported by an agreement rule. In those cases the Board has felt bound by its statutory function, which is to settle disputes over the meaning and application of agreements. It has long recognized that it is without jurisdiction to make an agreement for the parties, where they themselves have not done so.

The Railway Labor Act provides another avenue in the event the Carrier makes a change in working conditions which is not in conformity with its obligations under the Act. Nothing in the Act or in the awards of this Board gives the Board the Authority to impose an agreement, where none exists. That is the basic posture in which claimants find themselves.

It is not difficult to understand either the chagrin of the employes who see a payment they had been accustomed to receiving withdrawn; or the Carrier's view that it is not obliged to continue a payment which is not authorized by the Rules, despite the fact that it has continued over a long period of time. There are cases which appear to be out of the mainstream of the Board's holdings and which indicate that a practice which continues for a period of time becomes the rule, regardless of the fact that there is no agreement or rule to support them. The Board does not believe that those cases reflect the majority holdings of this Board and declines to follow them.

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 claim must be denied.

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 31st day of August 1976.