

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21273
Docket Number MW-21050

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Pacific Lines)

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

(1) The Carrier violated the Agreement when it made unauthorized deductions of \$29.40 from the earnings of

B. S. Aceves	M. Butler	K. Herring
P. P. Andrade	J. G. Correa	P. Milazzo
G. A. Arciga	H. F. Hernandez	J. M. Rivera
A. A. Avalos	R. Hernandez	R. F. Romero
M. L. Avalos	R. Herring	J. P. Salazar
		J. E. Villacana

for the period from February 16, 1973 through February 28, 1973 (System File MofW 60-81).

(2) The Carrier further violated the Agreement when it made unauthorized deductions of \$40.43 from the earnings of

B. S. Aceves	M. Butler	R. Herring
G. A. Arciga	J. G. Correa	K. Herring
A. A. Avalos	H. F. Hernandez	J. M. Rivera
M. L. Avalos	R. Hernandez	J. P. Salazar

for the period from March 1, 1973 through March 16, 1973 (System File MofW 108-38).

(3) The Carrier shall return to each of the claimants the amounts improperly deducted from their earnings as shown in Parts (1) and (2) above.

OPINION OF BOARD: Claimants' employment required them to live away from home throughout the work week. Carrier made unilateral arrangements with a commissary company to provide meals to crew members, and it deducted \$3.50, plus tax, for each day the commissary was open, (which it remitted to the commissary company, to pay for the meals). Claimants did not utilize the commissary facilities, and object to the monetary deductions from their pay checks.

Rather, the employees assert that they were entitled to an allowance of \$3.00 per day for meals pursuant to the Award of Arbitration Board No. 298, which was incorporated into the basic Agreement as Article 37:

"MEALS.--(b) Employees who are employed in a type of service the nature of which regularly requires them throughout their work week to live away from home in outfit cars, trailers or movable housing, shall be allowed meal expense as follows:

- (1) If the company provides cooking and eating facilities and pays the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$1.00 per day.
- (2) If the company provides cooking and eating facilities but does not furnish and pay the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$2.00 per day.
- (3) If the employees are required to obtain their meals in restaurants or commissaries, each employee shall be paid a meal allowance of \$3.00 per day.
- (4) The foregoing per diem meal allowances shall be paid for each day of the calendar week, including rest days and holidays, except that it shall not be payable for work days on which the employee is voluntarily absent from service, and it shall not be payable for rest days or holidays, if the employee is voluntarily absent from service when work was available to him on the work day preceeding or the work day following said rest day or holiday."

Carrier has urged that this Board is without jurisdiction to determine the dispute; since an interpretation of the Award of Arbitration Board 298 is involved. Carrier relies upon Award 19704 and others, as well as certain Court determinations. However, although unquestionably, the agreement language had its genesis in Award 298, it is incorporated here as contractual language, and under that circumstance, and the basic nature of the dispute, we do not feel that this Board is divested of its obligation of exercising its obligation to determine the dispute. Rather, we feel that the dispute is properly before us for adjudication based upon the results of Awards 19945 (citing Award 19075) and 20180.

While it is conceded that the Carrier does not have a right to require any employee to eat in the commissary, nonetheless, the logical conclusion to the Carrier's assertion is that the men were required to support the commissary. While it may be coincidental that the meal allowance provided under the Agreement and the amounts deducted and forwarded to the commissary company are similar in amount, there is no guarantee that the commissary payments could not be drastically increased.

We have considered Award No. 19478 and feel that it speaks, to some extent, to the dispute here in issue. That Award concluded that when Carrier does not furnish certain facilities specified in Paragraphs 1 and 2 of Rule 37 b, the employe shall be paid a meal allowance of \$3.00 under Paragraph 3. We do not read into that Award a capability of a Carrier diluting the contractually required payment by then deducting that, or any other amount, to forward to a commissary company.

In short, we find nothing in Rule 37 b which permits the Carrier to designate where the employe will eat under Paragraph 3, when cooking facilities are not provided, thus, it may not compel payment to a commissary company.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1976.