

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21656
Docket Number MW-21621

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

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

(1) The Carrier violated and continues to violate the Agreement when it requires machine operators who successfully bid for or displace on machine operator's positions, to break in without compensation therefor (System File MW-75-38).

(2) All machine operators be allowed payment for break in period in qualifying for positions as has been done in the past.

OPINION OF BOARD: The claim of the Organization involves a dispute relative to the interpretation of Article 8, section 6 of the Agreement, which reads: "Employees accepting positions in the exercise of their seniority rights will do so without causing expense to the Company."

Prior to arguing merits, the Carrier contends that the Board has no jurisdiction over this matter in that this claim was previously settled on the property in a previous case. A review of said case (MW 72-38) reveals that the matter was withdrawn; however, the letter effecting the settlement reads in part: "This settlement is not without prejudice to the position of either party, establishes no precedent and will not be referred to in connection with any other case." The case law of the Board, as well as the intent of the Organization as expressed above, supports a decision of the Board to hear the claim.

The Carrier interprets this Article to mean that said employees must use their time qualifying without compensation in that the alternative to said practice would require the Carrier to compensate two (2) employees, one to operate the machinery and the other who is being trained as a new operator. The Carrier asserts that this has been the past practice.

The Organization contends that on April 15, 1975, Carrier promulgated instructions which are contrary to Article 8, section 6, in that this article is relative only to expense involving meals, lodging and travel in the exercise of seniority and at no time has it been interpreted to deny

the employee wages. The Organization further contends that the interpretation placed upon the article by the Carrier is discriminatory in that the Carrier admits that it compensates employees to qualify on new machines as well as new employees to qualify for positions involving the operation of machines.

The Carrier and the Organization submit that it has been the past practice as they individually support their opposing positions. Under generally accepted arbitral practice, past practice may be relevant in determining the intention of the parties to an agreement where said agreement is ambiguous or silent. In order to prove past practice, the petitioner must present evidence that said practice must be of sufficient generality and duration to imply acceptance of it as an authentic construction of the contract. The record in this claim does not provide sufficient evidence to meet this criteria. The Organization submits letters from some twenty-five (25) employees who allege that the phrase "at no expense to the Company" was limited to expense relative to meals, travel and lodging and that this was the past practice. The reliability of these letters was challenged by the Carrier in its declination of August 14, 1975. Accordingly, we have no authority to render a decision in this matter lacking sufficient and substantial evidence in the record as to what the parties to the Agreement intended. Accordingly we will dismiss 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

That the Claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.