NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22148
THIRD DIVISION Docket Number SG-21990

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Claim No. 1 - Case SG-35-75

Claim on behalf of T&T Maintainer A. Shoemaker for reimbursement of $3.00 meal expense incurred September 2, 1975.

Claim No. 2 - Case SG-36-75

Claim on behalf of T&T Maintainer P. Leonardi for reimbursement of $2.95 meal expense incurred September 2, 1975."

OPINION OF BOARD: Two Claimants herein, regularly scheduled to work from 8:00 a.m. to 4:00 p.m., were directed to work from 5:00 a. m. to 4:00 p.m. -- eleven hours -- on September 2, 1975. Under Rule 19(c) claim was made for meal reimbursement, which was denied by the Carrier.

Rule 19(c) reads:

"Employes shall not be required to work more than 10 hours without a second meal period, except in cases of emergency. The time of such second meal period and subsequent meal periods shall be not less than 30 minutes, and such time shall be paid by the Company. Such meal periods shall not terminate the continuous work period. The meal periods subsequent to the second meal period shall be at intervals of four hours. Employes shall be reimbursed for the meals referred to in this paragraph (c) if the meals are not furnished by the Company.

Carrier defends its position on the basis that the additional hours, scheduled in advance, were prior to the start of the bulletined work hours and that payment for meal reimbursement under identical circumstances has not been paid in the past 21 years.

The Organization rests its argument on the clear language of the rule.

Generally accepted in numerous previous awards is the principle that past practice cannot be determinative where the language of the Agreement is clear and unequivocal. The Board finds Rule 19(c), particularly as to the final sentence, does not yield to more than one interpretation. If the Carrier wished to give the limited interpretation to Rule 19(c) it sets forth in this dispute, it has had many opportunities in the past to seek to modify the applicable language.

The Board finds, therefore, that meal reimbursement is due under the circumstances of this dispute. Allowance must be made, however, for the Carrier's position that no claims have been paid for meal reimbursement under identical circumstances in the past. The Organization offered only a general statement but no specific proof to the contrary. The Carrier should not be penalized retroactively for applying its apparently unchallenged interpretation to the rule.

The Board will sustain the Organization's position as to the clear meaning of Rule 19(c), requiring a meal reimbursement where employes work more than 10 hours, but will not require a monetary payment to settle this 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.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.