

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24674
Docket Number SG-24228

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Southern Railway Company

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company, et al.:

Claim No. 1. General Chairman file: SR-182.
Carrier File: SG-458

(a) Carrier violated the Signalmen's Agreement, particularly Rule 10 of the System Gang Agreement effective April 9, 1974, revised December 3, 1975, when they removed from Mr. J. G. Taylor's expense account and refused to reimburse for travel expense he incurred on March 26, 1980 returning home from Atlanta, Ga. to Pine Knot, Ky., and for travel expense incurred on May 7, 1980 returning home from Atlanta, Ga. to Pine Knot, Ky. The travel expense was removed June 1980 and Mr. Taylor was notified by letter on June 11, 1980.

(b) Carrier now be required to reimburse Leading Signalman J. G. Taylor for travel expense in the amount of \$56.28 incurred on March 26, 1980, and for the amount of \$58.14 incurred on May 7, 1980, because the Agreement was violated when Carrier removed the two days of travel expense from his March-April and April-May 1980 expense forms before they were approved for payment on June 11, 1980.

Claim No. 2. General Chairman file: SR-185.
Carrier file: SG-459.

(a) Carrier violated the present Signalmen's Agreement, particularly Rules 10 and 12 (b) of the System Gang Agreement, effective April 9, 1974 and revised December 3, 1975, when they refused to reimburse Mr. J. G. Taylor for travel expense and meal expense for the expense period of May 16, 1980 to June 15, 1980 because of travel expense he incurred on June 2, 1980, from Pine Knot, Ky. to Atlanta, Georgia.

(b) Carrier now be required to reimburse Mr. J. G. Taylor for travel expense and meal expense he incurred between May 16, 1980 and June 15, 1980 in the amount of \$652.00, as submitted on expense forms 1750 and 1750-1 June 15, 1980 while working on System Signal Gang #1.

(c) Carrier also be required to pay, in addition to the amount of \$652.00, one and one-half percent interest per month on the amount claimed until Claimant is reimbursed for his expenses as provided by Rules 10 and 12 (b) of the System Gang Agreement.

OPINION OF BOARD: The separate claims are for reimbursement of expenses incurred by the Claimant, a lead Signalman in a System Signal Gang, for travel to or from his home on three occasions. The Claimant asserts that disallowance of the items violated Rule 10 of the System Signal Gang Agreement.

Rule 10 provides that the Carrier will reimburse Gang employees for transportation expenses incurred when they travel to or from their residence "at the beginning and/or end of their off days periods"

The Claimant's System Gang worked the normal schedule of four 10-hour-day work periods and three "off days periods". On the occasions in dispute the Claimant, for personal reasons, traveled on one of the four work days. In two instances, he began his travel from the job site at the end of the third day of his work period. In the third instance, he began his travel from home to the site on the first day of his work period.

The Organization contends that the claim is supported by the intent of Rule 10 as reflected both in its language and in an alleged six-year practice on this property. It sees a simple undertaking by the Carrier to reimburse an employee for his travel on the day before he actually begins to work and on the day after he actually ends his work. It regards the "off days period" as simply those days on which the employee did not work. The Organization urges that the Carrier must be presumed to agree with its position. This is so, it says, because the Carrier has failed both to deny the existence of the asserted six-year practice and to furnish the Organization with requested records for those years.

The Carrier argues that the Rule is clear and unambiguous and must be read to mean what it says: that travel expenses will be reimbursed only if incurred at the beginning or the end of the employee's scheduled off days following his completion of the scheduled work week. With respect to the alleged six-year practice, the Carrier concedes that it may have made reimbursement in some cases. It argues that individual instances or even a past practice cannot, however, under well established principles of all Divisions of this Board, prevail over the clear and unambiguous language of Rule 10.

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Upon careful analysis, the Board finds the Organization's interpretation to be unacceptable in view of the clear language of Rule 10, whether it is read by itself or in the context of the unambiguous overall governing provisions of Rule 9. We must conclude that the claims do not meet the requirements of Rule 10. Accordingly, they were not improperly disallowed. The Board finds no evidence in this record of a vindictive motive for denial of these claims.

We need not on this record determine whether an established practice may have altered the plain meaning of Rule 10. For we find no clear and convincing evidence of a firm and unvarying custom on this property of paying claims based on essential facts substantially like those here in dispute. Although the Carrier has not denied categorically the Organization's assertion of the existence of a practice, it has responded in a way that cannot be construed as a concession of the truth of that assertion. Nor can we find that the Carrier's failure to furnish the requested records is alone sufficient to support the Organization's assertion. The Organization has not shown that such necessary proof was not reasonably available to it from other sources. In short, the Organization has not maintained the burden of proving its assertion. It cannot leave to the Carrier the principal task of building the substance of its claims.

The claims will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984