NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24772
Docket Number MW-24690

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Joint Texas Division of Fort Worth and Denver Railway
(Company - Chicago, Rock Island and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to reimburse Welder C. K. Gauntt for meal expenses incurred while he was required to be away from his headquarters point on December 1, 2, 10, 11, 12, 15, 16, 17, 18, 22, 29, 30, 1980; January 2, 6, 7, 8, 12, 13, 17, 21, 1981; February 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 24, 25, 26, 27, 1981; March 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 24, 30, 31, 1981 and on certain dates subsequent thereto (System File B-1-81/JT W-29).

(2) Welder C. K. Gauntt now be allowed $58.20 for December, 1980; $39.51 for January, 1981; $76.81 for February, 1981; $68.72 for March, 1981 and he shall be reimbursed for meal expense similarly incurred on dates subsequent thereto."

OPINION OF BOARD: In this dispute Claimant contends that Carrier violated the collective Agreement, particularly Rule 24(a) when it refused to reimburse him for midday lunch expenses while he was required to be away from his headquarter's point at Teague, Texas.

Rule 24(a) provides:

> "Employes other than those covered by paragraph (b) of this rule will be reimbursed for cost of meals and lodging incurred while away from their outfits or designated headquarters by direction of the Company. This rule not to apply to midday lunch customarily carried by employes, nor to employes traveling in exercise of their seniority rights."

He avers that he had not been customarily required to carry his midday lunch and asserts that Carrier had reimbursed him in the past for such expenses. He argues that a past practice has been established which requires reimbursement, and cites several Third Division decisions as precedential authority. (See, for example, Third Division Awards Nos. 18267, 18548 and 20545).

Carrier contends that Rule 24(a) (Supra) specifically excludes reimbursement for midday lunches customarily carried by employes, and asserts that Claimant's interpretative version represents a language recasting that is totally inconsistent with the rule's intended meaning and application. It argues that Claimant was furnished transportation to permit him round trip travel from his residence to the assigned work situs which allowed him to carry his midday lunch. It avers that Rule 24(a) (Supra) was designed to reimburse meal expenses when employes were unable to return to their headquarters point, which is not the case herein. It acknowledges that Claimant was reimbursed for such expenses in the past, but asserts that these payments were made incorrectly and do not constitute a controlling past practice.

In our review of this case, we agree with Carrier's interpretative position. Rule 24(a), which is a clear and unambiguous provision, is designed to apply to employes unable to return to their headquarter's point. It does not apply to midday lunches customarily carried by employes. This is the salient situational distinction. In the case before us, however, we cannot disregard Carrier's lack of enforcement of this rule, when Claimant submitted and was reimbursed for similar meal expenses. It created a defacto practice with respect to Claimant that understandably encouraged his actions. We do not find a broad based past practice indicating a mutual acquiesence to vary the application of the rule, but we find that Carrier was lax in enforcing it vis Claimant. By not giving Claimant advanced notification that it would enforce the rule, it led him to expect that he would be reimbursed for similar claims. Accordingly, we will sustain Claimant's claim, but only because Carrier approved his reimbursement claims in the past. This ruling does not preclude Carrier from enforcing Rule 24(a) in the manner intended; Carrier should make clear that it will enforce it.

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 aprpoved 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984.