NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26055
THIRD DIVISION Docket Number MW-25936

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
((Northern Region)

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

(1) The Carrier violated the Agreement when it refused to fully reimburse Roadway Equipment Repairman R. Keating at the rate of $20.00 per day for meal and lodging expense for April 4, 5, 6, 7 and 8, 1983 (System File C-TC-1650/MG-4081).

(2) Because of the aforesaid violation, Roadway Equipment Repairman R. Keating shall be allowed $14.50 per day beginning on April 4, 1983 and ending on April 8, 1983, both dates inclusive".

OPINION OF BOARD: The controversy involves a dispute over entitlement to lodging expenses under the provisions of Rule 5(d). There is no dispute that Claimant was properly allowed a meal allowance of $5.50 for each of the Claim dates.

Briefly, Claimant Keating was regularly assigned as a Roadway Machine repair man to Surface Force 1261 established with Headquarters in Camp Cars in the vicinity of Monroe, Michigan on April 14, 1983.

Claimant disputes that he was provided adequate bunk and locker facilities in Camp Car No. 911017 with other members of Force 1261 on each of the Claim dates.

The Organization contends that all sleeping space and locker facilities were occupied in the Bunk Car. As evidence thereof, the Organization presented a letter written by the Foreman of Force 1261 in its Submission which states in pertinent part:

> "...We returned to work April 14th in Monroe. I had an 8 man crew and an 8 man camp car which was in very poor condition. In a short-time my men had picked their bunks leaving Mr. Keating and Clyde Manis without beds or camp car..."

The Organization maintains that Claimant and the other employe had to seek lodging and meals elsewhere.

Carrier contends that fewer than four men actually stayed in the Bunk Car each night because most employes elected instead to travel home each evening and return the following day.

Carrier asserts that sufficient accomodations were available and Claimant had been informed, but refused to use them. However, no evidence was presented to support Carrier's position that Claimant, who resided within a reasonable driving distance from Monroe, would have chosen to travel home daily, regardless of the availability of lodging facilities at the Bunk Car.

The Organization argues that where Claimant ultimately obtained lodging and meals is not relevant. It asserts that the Agreement provides for the reimbursement of lodging expenses when an employe is away from Headquarters when facilities are not provided by Carrier, even if he returns home evenings.

The pertinent provision of the Rule involved is:

> "Rule 51 Camp Cars
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> (d) For employees who are regularly employed in a type of service, the nature of which regularly requires them through-out their work week to live away from home in camp cars, camps highway trailers, hotels, or motels, if lodging is not furnished by the Railway Company, the Employee shall be reimbursed for the actual reasonable expense of such lodging not in excess of $4.00 per day".
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> (Maximum reimbursement was increased to $20.00 per day effective April 1, 1983).

The record clearly indicates that Claimant returned home each night. Whether or not suitable camp facilities were available is not an issue the Board needs to decide. The Rule involved refers to "Expenses" which must be "actual". The records lacks any showing whatsoever that Claimant incurred lodging expenses while staying at home.

The Board has addressed disputes such as the instant dispute in previous Awards. The fact pattern and applicable Rule in the instant Claim is consistent with Third Division Award No. 21089, which interprets reimbursement in terms of "actual" expenses as opposed to providing an automatic lodging allowance.

Carrier has noted that there was no "actual necessary", out of pocket or additional expense incurred under these circumstances and thus the Employe is not entitled to any reimbursement.

The Board does not question the conclusions contained in the Awards

cited by Claimant regarding the limitations imposed by stated exceptions. However, in order to reach that question, we must find a compliance with the basic contractual language. The Rule reimburses for "..actual...lodging expenses". Here, the Claimant made no lodging expenditures for the days in question except for payment of his normal and regular periodic rent.

The Board does not find the Awards cited by Claimant in this regard as persuasive whereas the Carrier's citations are precedential to its position. In Second Division Award No. 3658, the Board considered Agreement language requiring reimbursement for "actual necessary expenses" in a dispute in which the Claimant continued to live at home. The Board felt that the objective of the Rule was to reimburse Employes for "additional expense". See, also, Award 12120, which defined "actual" expenses as "out of pocket" expenditures.

While this Board can speculate as to various possible combinations of factual circumstances under the Rule, we are, of course, confined to the record before us. The Rule refers to "expenses" which must be "actual". Thus, it appears that, in order to prevail, Claimant was required to show a paid out expenditure, and the mere reliance upon a showing of a pro-rated portion of normal monthly rent on his regular place of residence does not suffice.

The Organization claims violation of Rule 51(d). The Claim is for monetary damages.

The Board concludes, in the absence of any proof of required paid out lodging expenditures, Carrier does not properly owe any damages. Accordingly, the Board finds the instant Claim without merit.

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 the Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 11th day of June 1986.