NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26104
THIRD DIVISION Docket Number TD-26001

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Cincinnati, New Orleans and Texas Pacific Railway Company

STATEMENT OF CLAIM: "Claim of the American Train Dispatchers Association that:

'...The Carrier has violated our present working Agreement of October 28, 1982, by not allowing extra Train Dispatcher Redmon, necessary reimbursement for meals and/or transportation expense which occurred while being away from his presently assigned outlaying (sic) position at Danville, Kentucky.' [Carrier file TD-53]"

OPINION OF BOARD: There are a number of Claims before this Board on behalf of Claimant P. S. Redmon, wherein Claimant requested reimbursements under the October 28, 1982, Agreement and such Claims were denied. That Agreement in selective and pertinent part states that:

> "An extra train dispatcher working for the Carrier at outlying points in some other capacity, when required to perform service as train dispatcher, will be compensated for traveling time and reimbursed for expenses in accordance with the following provisions:
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> (1) When required by Management to be away from the outlying point to perform two or more consecutive days of train dispatcher service, he shall be reimbursed for necessary and reasonable cost of meals and lodging away from the outlying point, not in excess of $21.00 per day... When lodging is secured, receipts must be furnished.
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> (2) When an extra train dispatcher is used to fill a one-day vacancy, and the outlying point where he is working in another capacity is 100 or more miles from the dispatching office, he shall be reimbursed for necessary and reasonable cost of meals, not in excess of $9.00 per day.
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> (3) ...he will be reimbursed on the basis of the current mileage rate...for each mile traveled from the outlying point to the train dispatching office, and return to the same or another outlying point.

(4) If the time consumed in actual travel...from the outlying point to the train dispatching office...then the excess over one hour in each case shall be paid...at the straight time rate... When traveling by automobile, time shall be computed at the rate of two minutes per mile traveled and there shall not be a deduction of one hour in computing the travel time."

In the record that developed on property Claimant Redmon was working at outlying points of either Danville, Kentucky or at his regularly assigned outlying position at Oakdale, Tennessee. Claimant was required by the Carrier to be away from one of these outlying points to perform service as a Train Dispatcher in Somerset, Kentucky. As such, Claimant filed various Claims to be reimbursed for meals and transportation expense as he was away from his outlying point.

In the beginning of this Claim on property two interrelated issues are vaguely merged into one. Claimant is denied reimbursements by the Chief Dispatcher in letters of April 19 and May 2, 1983, "because the expenses shown on your forms were not actually incurred." The declinations suggest both that the Claimant did not "actually" incur the expenses requested and that the "agreement is for reimbursement and not for allowances or arbitraries" in that the Claimant may have had expenses, but none which were Agreement reimbursable. The Superintendent suggests that Claimant had no actual expenses, but more importantly that "Claimant Redmon is a resident of Somerset, Ky., and his claim for mileage is not valid." As such, it progresses that the Carrier is questioning the Claim, not because the Claimant didn't travel from outlying points to protect an assignment in Somerset, but because the Claimant lives in Somerset.

On property the Carrier continues in declination to focus on place of residence as in the letter of May 10, 1983, which states that "Mr. Redmon resides in Somerset and you have offered no proof that the expenses claimed were actually incurred." Out of context it appears that the Carrier rejects the Claim both because the Claimant lives in Somerset and because the Claimant didn't actually incur the expenses. In context, the Organization explicitly perceives the intent of the Carrier as denying the Claim and violating the Agreement, since Claimant was called to perform service from his outlying position and "to commute to and from the outlying point." Nevertheless, Claims are still being denied as late as May 23, 1983, because "these expenses and deadheads were not actually incurred."

The correspondence on property in June, July and August finds that the Carrier clearly rejects the Claim for meal and/or transportation expenses because the Claimant worked in the city in which he lived and therefore wasn't being "reimbursed." At no time on property does the Carrier clearly deny the Claim because the Claimant wasn't "required to commute between his regular assignment at Oakdale, to perform extra work at Somerset." Nor does the Carrier deny on property the General Chairman's further argument in his October 17, 1983, letter that "...we have identical circumstances at other locations on the property which claimants are experiencing no difficulty in receiving their due compensation."

In final correspondence on property in letters of November 23, 1983, and Carrier's conference letter of April 25, 1984, it is clear that the Carrier has taken the position "that an extra train dispatcher is not entitled to the benefits of the Agreement...if he travels from his home." These Claims were denied by Carrier on those grounds requesting the Claimant provide evidence for reimbursement of meal expenses or travel. Both parties to the dispute agreed to hold Claims "in abeyance to be discussed after resolution of [this] dispute."

This Board has very carefully reviewed the facts as they emerged on property. As a preliminary and major point they differ significantly from the facts and interpretation the Carrier presents in its Ex Parte Submission. If indeed, Claimant worked on May 7 and May 9 with May 8 as an off day, such information should have been explicitly presented on property where the case must be made. It comes too late for this Board's consideration at this time. Throughout the on property correspondence, embedded explicitly in the Carrier's declination of Claim is that Claimant "resides in Somerset." That point became the central issue on property for contract interpretation rather than discipline for factual misrepresentation. Finding no supporting evidence on property to support the line of reasoning that the Carrier clearly rejected the expenses because they did not actually occur as per Carrier work records and the like, the Board will not consider that issue now. All such arguments, lines of reasoning and supporting documentation not discussed on property are inadmissible. This position is a firmly established position of the National Railroad Adjustment Board, codified by Circular No. 1 and consistent with numerous Awards of this Division (Third Division Awards 20841, 21463, 22054).

The Board holds that the Organization made a prima facie case in the Claimant's filing of forms stating the trips were made and reimbursement required. Carrier's declinations were based on the fact that Claimant resided in Somerset. If they were based on any other grounds, it was incumbent upon Carrier to make such arguments clear as to deny the Claim upon the fact that the Claimant never made the trips. That case was not made on the property. On property he did not make the trips because he resides in Somerset.

As such, this Board finds that the Agreement is clear with respect to both residence and reimbursement. With regard to residence, the Agreement includes no mention of the city in which the Claimant lives. As there was no challenge on property that Claimant was working an outlying point and required to perform services elsewhere, Claimant comes under the Agreement and is due reimbursement in accordance with the Agreement.

As for reimbursed expenses, this Board has carefully reviewed the conflicting Awards with regard to meals which an employee may take at home. Many Awards deny such reimbursements as speculative, arbitrary and not entitling reimbursements (Third Division Awards 21420, 21089, 13990). Other Awards reimburse employees for meals eaten at home arguing such is entitled when he is away from his work station or outlying point even if such meals are at home (Third Division Awards 20011, 17536, 16463, 10923). In the instant case, this Board does not find anything in the Agreement requiring meal receipts, or any probative evidence by Carrier indicating that the Claimant should have been expected or required to hold and attach such amounts. Unlike past Awards

based upon provisions substantially different, the present Agreement does not explicitly use language such as "real" or "actual" expenses, but "necessary" and "reasonable." There is no showing in the record on property of Agreement violation on the part of the Claimant with regard to the necessary and reasonableness of the requested reimbursement. As such, Claimant is entitled to compensation for meals for all days in which Claimant left his outlying point, protected his Somerset assignment and returned to an outlying point. As for transportation, Claimant is due reimbursement for "time consumed in actual travel" in accordance with Section (4) of the Agreement and mileage as provided in Section (3).

This Board finds that the Agreement was violated in that the Claimant's residence is not relevant to an interpretation of the Agreement. As for the compensation, we remand back to the parties on property to calculate from Carrier's records the reimbursable expenses and travel time as Carrier maintains on property that "the expenses shown...were not actually incurred." It is the Board's intention that if the Claimant did work at the outlying point before and after his performing service as Train Dispatcher in Somerset, then travel time and expenses should be allowed as provided in the Agreement, as interpreted by this Board. If, on the other hand, the Claimant worked continually, day by day, as Train Dispatcher, and did not return to the outlying point, he is not entitled to travel time and mileage allowances for such days.

The Claim, therefore, is sustained, subject to the foregoing proviso.

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 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 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 22nd day of August 1986.

CARRIER MEMBERS' DISSENT
TO
AWARD 26104, DOCKET TD-26001

(REFEREE ZUSMAN)

In its sustaining Award 26104, the Majority has disregarded the most basic principle of claim handling, ignored the meaning and intent of the applicable Agreement, distorted positions taken by the Carrier, and confused the facts of the case.

The most elementary and fundamental principle in the claim handling procedure is that the proponent of the claim has the burden of proving that claim with substantial evidence (see Third Division Awards 18515 and 15536 as examples). In this case, Claimant requested certain expenses be paid based on a rule which called for him to be "reimbursed for ... meals," "reimbursed ... for each mile traveled" and, with certain limitations, payment for "time consumed in actual travel." Under the clear and unambiguous language of the Agreement, expenses must actually be incurred to be subject to reimbursement. From Carrier's first declination of the claim through the last letter of correspondence before it was submitted to this Board, Carrier took the position that the claimed expenses were not proper because they were not actually incurred. Despite this, the Majority held that "the Organization made a prima facie case in the Claimant's filing of forms stating the trips were made and reimbursement required." Such a ludicrous holding, under the circumstances, defies logic or reasonable explanation. In addition, it ignores the well-founded principle that squarely places the burden of proving the case on the Claimant and Organization. This burden was even more important in a case where, at every step of the appeal process, Carrier rejected the claims on the basis that the expenses and travel for which expenses were requested were not incurred.

As if that were not enough, the Majority distorted Carrier's position for declining the claims. On page 3 of the Award, the Majority states that "the Carrier has taken the position 'that an extra train dispatcher is not entitled to the benefits of the Agreement ... if he travels from his home.'" That position was never taken by the Carrier; a review of the correspondence exchanged in this dispute reveals that this statement was contained in a letter written by the Organization's representative, not the Carrier. While it is an undisputed fact that the Claimant did live at the location of the dispatching headquarters, (and it takes no genius to deduce that an individual did not travel from an outlying point to his home/headquarters when he was working there on consecutive days as a Dispatcher), that was not the fundamental basis for declining the claim. The Majority took what the Organization may have wished Carrier's position to be and superimposed it over what Carrier actually did argue - that the expenses claimed were not incurred. In point of fact, from the initial declination through conference and each step of the appeals process, Carrier steadfastly maintained that the expenses requested were not actual, were not incurred, and thus were not subject to reimbursement under the Agreement.

Finally, the Majority sustained the claim for expenses which were obviously fictitious. The Award recognized that Claimant did not make all the trips claimed by remanding that portion of the claim involving travel time and mileage back to the property to compare what was claimed to Claimant's work record as a Dispatcher and as a Clerk. By so doing, the Majority recognized that all of the trips that were claimed were not made, and it likewise should have made an equally astute observation regarding the meal expenses claimed. The meal claim before this Division consisted of 76 meals, each for exactly $3.00. Anyone who believes that such coincidental expenses were actually incurred would buy the Brooklyn Bridge.

By its sustaining Award, the Majority has permitted Claimant to reap a windfall when he has never produced the first shred of evidence proving these so-called expenses were actually incurred. In so doing, the Board ignored well established burden of proof principles set forth in numerous prior Awards, distorted the meaning and intent of the applicable Agreement, and permitted the Claimant to reap a totally unjustifiable windfall. For these grievous errors, we vigorously dissent.

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