

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Delaware and Hudson Railway Company

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

(1) The Agreement was violated when the Carrier failed and refused to reimburse System Equipment Operator F. Lipka for travel, meal and lodging expenses he incurred while working away from home (System Case 16.85/BMWE-17-85).

(2) The claimant shall be reimbursed for the travel, meal and lodging expenses described in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In 1980, the Carrier and Organization agreed to a new classification of System Equipment Operator who would be required to protect assignments systemwide. The parties also agreed to a schedule of payments for employee expenses when a System Equipment Operator was assigned to work at a location distant from the designated headquarters.

Pertinent parts of the 1980 Agreement provide:

"When such payments for away from home and traveling expenses are made (i.e., when employees are required to work away from their assigned headquarters), the System Equipment Operator will be required to report to the assigned location of work at the required starting time.

B.1 System Equipment Operators required to travel more than fifty (50) miles, one way, from home to work location, will receive actual reasonable expenses not to exceed \$15.00 each day for lodging and \$10.00 each day for meals.

Bona fide receipts will be required with expense accounts for payment.

2 Traveling allowance for use of personal vehicle will be paid at the actual allowance for mileage and System Equipment Operators will be allowed time at the hourly rate of pay of the assigned position he is traveling to or from, at the rate of forty (40) miles per hour from home to the work location, on the first and last days of the assignment or work week for traveling, either within or outside the hours of the normal tour of duty."

Claimant has submitted expenses totalling \$1,150.70 for January and February 1985 under the 1980 Agreement. Carrier has declined to pay the expenses.

According to the Carrier, personal expenses are payable only when the employee is instructed to report directly to a work site away from headquarters. To interpret the Agreement otherwise would obligate the Carrier to pay the employee's personal expenses simply for reporting to work. The Carrier asserts that the Claimant reported to his headquarters each day of the claim period and, therefore, is not entitled to personal expenses.

According to the Organization, for the first two years following the 1980 Agreement, System Equipment Operators were reimbursed for expenses whenever assigned to work away from the headquarters, regardless if they first reported to headquarters. In 1982, when the Carrier's Chief Engineer retired and a new man assumed his position, the Carrier unilaterally changed the interpretation of the 1980 Agreement and began refusing expense payments when System Equipment Operators reported first to their headquarters.

The Organization argues that the Claimant's expenses are eligible for reimbursement since he was assigned work away from his headquarters. In any case, the Organization states, in this instance the Claimant did not report to headquarters on a daily basis, so he would be entitled to reimbursement even under the Carrier's more restrictive interpretation.

We will defer for the moment the contradictory assertions of the parties concerning whether the Claimant reported directly to his headquarters during the claim period. We will address first the issue of what the 1980 Agreement requires.

The Organization maintains that a consistent past practice developed during the first two years of the Agreement whereby System Equipment Operators "were considered as having reported directly to their machines, rather than their 'headquarters,' on a daily basis and were reimbursed for expenses accordingly." The Carrier made no effort on the property to dispute the existence of this practice, the Organization asserts, so it must be accepted as the parties' understanding of the meaning of the Agreement.

In its rebuttal Submission, the Carrier disputes the alleged past practice, insisting that employees consistently have been reimbursed only when instructed at the end of the day to report back directly to the same non-headquarter location the following day. The Carrier further argues that even if the Organization's alleged practice existed, it cannot overcome clear and unambiguous language to the contrary.

To the extent that the Agreement's language is clear and unambiguous, it does not support the Carrier's interpretation. The unnumbered paragraph in the Agreement provides expense payments when employees are assigned to work at non-headquarters locations and required to report there at the "required starting time." Paragraph B.2 provides a travel allowance for use of a personal vehicle "either within or outside the hours of the normal tour of duty." Therefore, the "required starting time" referred to in the unnumbered paragraph may be a time "within the normal tour of duty," and the language does not unambiguously preclude expense payments when an employee starts his tour of duty by reporting to headquarters.

Since the Agreement is neither clear nor unambiguous, we must consider past practice to ascertain its intended meaning. The Organization asserted the existence of a two-year practice at an early step in the handling on the property. The Carrier made no attempt to refute this assertion until its rebuttal Submission. Neither party has offered any documentary evidence to support its position. Therefore, we shall accept the Organization's position, since it was uncontested on the property.

Consequently, the established practice between 1980 and 1982 indicates that the intent of the Agreement was to pay personal expenses as outlined when a System Equipment Operator is assigned to a work location away from his headquarters, and we shall so order. There is no need for us to attempt to resolve the question of whether or not the Claimant reported to headquarters daily.

Note should be made of an additional argument raised by the Carrier. The Claimant had indicated on his expense reports that he had stayed in Borealis and Esquire, New York during this two-month period. The Carrier insists that Claimant was never assigned to work at these locations. However, Claimant's expense reports clearly indicate only that he took lodging at Borealis and Esquire; his work sites were at various other locations listed on the second page of the expense report. Therefore, the Carrier's objection on this basis is without foundation.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1989.