

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32449
Docket No. MW-31706
98-3-93-3-736

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to allow Mr. T. Peto a meal allowance to which he was entitled beginning August 17, 1992 (System File NEC-BMWE-SD-3198 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Peto shall be paid the applicable meal allowance (\$17.00 or \$21.00) beginning August 17, 1992.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant was assigned as a Repairman with the Track Laying System during 1992. As such, he was part of a traveling gang, working four days a week, living in camp cars, and being provided with three meals a day by the Carrier.

The Claimant has gout, which did not interfere with his work performance, but requires a restricted diet. In May 1992, the Claimant contacted the Medical Director, who determined that the choice of foods made available by the Carrier at the camp sites could provide an adequate diet within the Claimant's medical limitations.

Effective July 27, 1992, the Agreement covering meal arrangements was revised and included the following in Rule 89, Section VII:

“(e) Amtrak may substitute a \$21.00 per diem allowance in lieu of meals for each work day that covered employees perform compensated service, whether providing lodging or camp cars.”

On October 14, 1992, the Organization initiated a claim contending that the Claimant was “unable to eat the food provided by Amtrak” and arguing that he was thus entitled to the \$21.00 allowance, beginning August 17. (On November 5, the TLS Cook positions were abolished, and all affected employees, including the Claimant, were provided with the meal allowance.)

The Board is provided with no definitive information, either by statement from the Claimant or by the Organization, as to whether or not suitable food items were available within the Claimant's medical restrictions. Further, as pointed out by the Carrier, Section VII(e) is permissive in that the Carrier “may” provide the per diem allowance in place of furnishing meals. The payment is not a right given to employees, except obviously if the Carrier fails to provide any meal service.

As a result, the Board has no basis to determine whether the Claimant was deprived of a sufficient variety of food. If not, the alternative, at best, was that such food be provided and not necessarily that the permissive meal allowance be granted to the Claimant.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.