

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32620  
Docket No. TD-32796  
98-3-96-3-84**

**The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.**

**(American Train Dispatchers Department/International  
( Brotherhood of Locomotive Engineers  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation**

**STATEMENT OF CLAIM:**

**"Consolidated Rail Corporation (hereinafter referred to as 'The Carrier') violated the current effective agreement between the Carrier and the American Train Dispatchers' Department (hereinafter referred to as 'The Organization'), Rule 13 in particular, when the Carrier would not allow the 'Actual and necessary expenses for meals' submitted by Claimant on three separate occasions at the conclusion of familiarization trips made in conjunction with 'Road Days'. The Carrier shall now compensate R. A. Parmelee the balance due as a result of these claims plus interest."**

**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.**

Claimant Parmelee was required by the Carrier on three occasions over a period of 18 days in 1994 to undertake familiarization trips related to qualifying on his position as a Train Dispatcher. In accordance with his understanding of Rule 13, "ROAD DAYS," he submitted travel expense claim forms on May 30, June 13 and November 28, 1994, reflecting outlays of \$1450.60 incurred in that connection. Carrier allowed \$971.08 of that amount, and rejected the remainder as excessive meal expenses. This is a claim for the unpaid balance.

The Organization maintains that Claimant is entitled to the reimbursement he seeks under Rule 13, which reads as follows:

**"RULE 13 - ROAD DAYS**

A train dispatcher will be paid one day at the daily rate of his assigned position for each day consumed in making trips at the direction of the Division Superintendent to familiarize himself with the physical characteristics of the road. Extra or guaranteed assigned train dispatchers will be paid at the Train Dispatcher rate. Actual necessary expenses for meals and lodging away from headquarters will also be allowed."

Relying first on the literal language of Rule 13, Carrier maintains that it has an inherent right to make reasonable determinations regarding what constitutes "actual necessary" expenses. In support of its position, it cites a notice posted on February 20, 1991 by its Division Superintendent announcing that, effective immediately, no reimbursement would be made for meal expenses in excess of the following amounts: Breakfast: \$5.00. Lunch: \$7.50. Dinner: \$15.00. Carrier asserts that this notification was never challenged. It further argues that it re-publicized its policy without objection on July 27, 1993 in a communication that further advised employees of their need to document certain large expenses with receipts and make travel arrangements through designated service providers. Lastly, it cites several Division Awards denying similar claims on other properties under what it characterizes as "nearly identical" circumstances.

The Organization sees the dispute in distinctly different terms. It asserts that by implementing its directive relating to maximum meal allowances, Carrier has modified Rule 13 without the concurrence of the Organization as required by the Agreement. It

further argues that Carrier's policy was arbitrary, in violation of long standing past practice, and - contrary to Carrier's assertions - was clearly challenged by the Organization. It points to a letter from General Chairman F. L. McCann dated May 29, 1995 in which McCann stated that "... Conrail has a contractual responsibility to reimburse 'Actual necessary expenses for meals and lodging. . .'" and that "members of this Organization are not bound by [your] limitations. . ." In sum, it asks this Board to reject Carrier's denial of the claimed expenses, and invites us to make an independent judgment as to their reasonableness.

For the following reasons the claims are denied. Rule 13 provides for the reimbursement of "actual necessary expenses." The parties are sophisticated and their relationship mature; had they intended a Rule that would reimburse "actual" expenses incurred, with no limitations, qualifications or refinements, they presumably knew how to strike that bargain. But, as suggested by several past Awards addressing similar claims, the phrase "actual necessary" cannot be equated with "actual" unless the Board disregards the word choices of the parties. Said another way, the Rule says "necessary," and if that word has any meaning at all, it contemplates that at the end of the day *someone* must make a call as to which out-of-pocket expenses are excessive and which are unavoidable. On the record before us, it is simply impossible to conclude that Carrier has contracted away its right to deny expense claims it considers to be unnecessary. See, e.g., Award 2 of Public Law Board No. 2044 (Carrier's posted meal limits found enforceable under identical "actual necessary" language.)

Although energy has been expended on the debate, having found the intent of the parties to be clear from the language they adopted, the Board finds it unnecessary to address the assertion that in failing to grieve this issue after meal expense guidelines were posted in 1991 and reaffirmed in 1993, the Organization waived its rights under the Agreement. Nor is any decision necessary in this instance on the question of whether the daily maximum meal expenses promulgated by the Carrier will always be adequate to cover necessary meal costs in the face of all variables. Claimant here sought amounts in excess of those allowed by Carrier as "necessary," and then challenged Carrier's contractual right to question those claims. We conclude here, as other Boards have frequently recognized, that under this Agreement it is the function and responsibility of Carrier in the first instance to make the determinations Claimant objects to. That said, it may be that the posted guidelines under some circumstances may be applied so rigidly as to offend the Agreement. We find only that on this record, no proof has been

presented that Carrier arbitrarily denied meal claims in connection with the road trips at issue here.

**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 23rd day of June 1998.