

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37995
Docket No. MW-36689
06-3-01-3-231

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to reimburse Mr. K. L. Wassenberg in accordance with Rule 38 for expenses incurred in May and June 1999 (System File W-0038-151/1227284).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. L. Wassenberg shall now "**** be reimbursed a total expense of three hundred twenty five dollars and thirty one cents (\$325.31) tax free. . . ."

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 basic facts are not in dispute. Rule 38 of the parties' Agreement provides for "... actual reasonable necessary expense ..." reimbursement for meals when employees are assigned away from headquarters. The Claimant was so assigned for four days in May and eight days in June of 1999. He submitted meal expense reimbursement claims for his out-of-pocket costs and provided receipts to support the amounts claimed. The Carrier rejected the amounts claimed contending that they were not reasonable. The Carrier also raised some questions about the legitimacy of certain of the handwritten receipts. Nonetheless, on the record before us, the Carrier did not assert that the receipts were fraudulent, nor did it take any action against the Claimant for submitting false claims for meal expense reimbursement. The Carrier did, however, twice allege in its correspondence on the property that the reimbursement claims were "... 90 - 100% higher than average meal allowances claimed by other employees lodging in the same geographical area." The Carrier's allegation in this regard was not effectively refuted on the property.

Our review of the record does not reveal any surviving procedural issues that require our attention. Although the Carrier raised a time limit issue in connection with the filing of the claim, it was not done at its first opportunity to do so. In addition, the Carrier's report following the conferencing of the claim does not reflect that any procedural issues were discussed during the meeting held on November 16, 2000. Accordingly, whether the Carrier's procedural contention is deemed waived from the outset or abandoned at conference, the issue is moot and not properly before us.

It is well settled that carriers may establish policies that illustrate what amounts it considers to be reasonable under a provision such as we have before us. On this record, however, there is no evidence that the Carrier ever promulgated such a policy or provided the Claimant with any guidelines about what it would consider to be reasonable in advance of assigning the Claimant away from headquarters. Accordingly, in the absence of such guidelines, it is reasonable to accord employees some degree of latitude in their judgment about meal expenditures. Moreover, although the Carrier contended that meal expenses should "... average approximately \$20 per day ..." to be reasonable, we recognize that the statistical measurement of the average includes numbers both below and above that point. That being said, however, we are also mindful of the reality that claims 90 to 100% above the average are likely excessive and not reasonable.

Under the circumstances, primarily because of the lack of any advance guidance by the Carrier, we find that the Claimant should be reimbursed a total of \$300.00 for his meal expenses.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of October 2006.