

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38240
Docket No. MW-37284
07-3-02-3-294

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Soo Line 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 provide Machine Operator G. A. Bell the Camper Allowance reimbursement for August 7 and 8, 2000 (System File R1.638/8-00377).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. A. Bell shall now receive compensation in the amount of fifty-three dollars and fifty cents (\$53.50) for the Camper Allowance reimbursement for August 7 and 8, 2000.”

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 claim arises in a contention that the Claimant is entitled to a Camper Allowance of \$26.75 per day, a total of \$53.50, for the dates of August 7 and 8, 2000 under the provisions of Rule 35 and Side Letter No. 6 of a May 1, 1997 Agreement.

The above mentioned Agreement Rules prescribe that employees who are required to obtain lodging have the option of being reimbursed for the actual reasonable expense of lodging, not in excess of \$26.75 per day, or a Camper Allowance in that amount if they have an inhabitable camper vehicle that has been registered and approved by a designated Carrier Officer.

According to the Claimant, he was directed by a Carrier officer to report to Humboldt Yard in Minneapolis, Minnesota, for the dates at issue to operate a production tamper as a result of the regularly assigned Tamper Operator being off on vacation. At the time, the Claimant was assigned to a non-headquartered surfacing crew working on the Paynesville and Elbow Lake Subdivisions.

In its final declination the Carrier, by letter dated May 18, 2001 addressed to the General Chairman, said that the basis for its decision was a failure on the part of the Claimant to: (1) Provide evidence of being directed to work at Humboldt Yard by Mr. Evje (2) Show he was authorized by Mr. Evje to utilize his (Claimant's) camper in such instance (3) Demonstrate proof of an approved camper on the Roadmaster's authorized camper list (4) Show he was residing in such camper at Maple Lake on the dates at issue and (5) Show he actually commuted back and forth to Humboldt Yard on the dates at issue. The Carrier concluded its letter of denial with a statement that reads: "Until such is provided, you have failed to meet your burden of proof and your appeal is properly denied."

As the Board views it, study of the record supports the argument made on behalf of the Claimant that there is no basis in fact for the contentions set forth by the Carrier in its denial of the claim.

Contrary to the Carrier's argument in its letter of May 18, 2001, the Board finds that the record supports the conclusion that the Claimant had worked at Humboldt Yard on the dates at issue. We say this in recognition of the fact that the Manager Track Programs/Work Equipment denied the claim as filed only on the basis that employees had been instructed at the beginning of the season that they would be required to determine whether they wanted to choose the camper allowance for lodging, and that a decision in this regard would be for the entire work season. In this

respect, the Manager Track Programs/ Work Equipment said the following in denial of the claim:

"Mr. Bell was not given authorization from his Supervisor to stay other than what he had previously selected for his choice of lodging, and for that reason the camper allowance for dates in question was cut, therefore, this claim is denied."

As concerns the Carrier's contention that the Claimant failed to show authorization for use of his camper, the General Chairman said the following in a letter of March 23, 2001 on appeal of the decision of the Manager Track Programs/Work Equipment:

"Claimant was directed by Machine Operator Trainer Richard Evje to report to work at Humboldt Yard to operate the Production Tamper, a headquartered position, during the week of vacation taken by regularly assigned operator Fredlund. Due to no Lodging being authorized on the Humboldt Yard Tamper Operator position, Claimant received permission and authorization from Mr. Evje to use his travel trailer, parked in the Maple Lake area, during that week. Claim was timely and accurately filed, and should have been paid."

Evje having clearly been identified as the Carrier officer who was said to have both instructed the Claimant to report for work at Humboldt Yard and to have authorized the Claimant to use his camper, it was incumbent upon the Carrier to have presented into the record an evidentiary statement from Evje in support of its argument that no such authorization had been given to the Claimant by Evje.

In regard to the Claimant having an inhabitable and authorized camper, it is evident from documentation of record as presented during handling of the claim on the property that the Claimant possessed an Airstream camper that had been approved as inhabitable over the signature of a Carrier officer.

Lastly, as concerns the Carrier's contention that the Claimant failed to prove that he resided in the camper and commuted back and forth to his work site on the dates at issue, nothing of record establishes the manner in which an employee has been instructed or is required to substantiate such matters.

In the light of the above considerations and overall study of the record the Board finds that the claim must be sustained.

AWARD

Claim sustained.

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 18th day of July 2007.