

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45053
Docket No. SG-45474
24-3-NRAB-00003-230316**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Baltimore & Ohio):

Claim on behalf of J. L. Hast for \$81.66; account Carrier violated the current Signalmen’s Agreement, particularly Rule 28, when on October 2, 2017, it refused to compensate the Claimant the meal expenses he incurred while working away from his headquarters. Carrier's File No. 2017-228658. General Chairman's File No. 17-56-28. BRS File Case No. 16061-B&O. NMB Code No. 32.”

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 dispute in this case is over the Organization's position that the Carrier improperly failed to compensate the Claimant for meal expenses for which he was entitled as a result of working away from his headquarters even though the Claimant incurred no lodging expenses as he returned to his headquarters on the days the meal expenses were claimed.

Rule 28(g) provides:

"RULE 28 – SIGNAL INSPECTORS

* * *

(g) Where meals and lodging are not furnished by the Management and when the service requirements make the purchase of meals and lodging necessary while away from headquarters, employees will be paid necessary expenses."

The Organization asserts that there is a 52-year past practice where meal expenses have been paid on days when no lodging expenses were incurred. The Carrier does not deny the existence of the 52-year past practice of payment of meal expenses when no overnight lodging expenses were incurred. According to the Carrier's Division Engineer in his August 30, 2017 message:

"There is a new interpretation of expenses for inspectors. We cannot continue to pay daily expenses unless they are actually traveling overnight.

* * *

This is actually in-line with what the agreement says. It is different than what we have done for the last 52 years. ..."

The Carrier argues that under clear language in Rule 28(g) for there to be a meal expense reimbursement under the rule, there must be "meals and lodging" expenses incurred [emphasis added] and since the Claimant returned to his headquarters and did not incur lodging expenses, he was not entitled to the claimed meal expenses.

The Organization has the burden to demonstrate a violation of the Agreement with the first question being whether clear contract language supports the Organization's position. Third Division Award 35457:

"This is a contract dispute. The burden is therefore on the Organization to demonstrate a violation of the Agreement. ...

First, because the Organization has the burden in this case, the first inquiry is whether clear contract language supports the Organization's position. ..."

As the Carrier argues, for the meal expense reimbursement benefit to apply, because of the use of the word "and" between the word "meals" and the word "lodging", at first read the phrase "meals and lodging" appears clear and means there must be lodging expenses "as well as; in addition to ... also ... at the same time", as meal expenses. See The Random House Dictionary of the English Language (2nd ed.). Under those definitions of the word "and", clear language would appear to support the Carrier's position that lodging expenses must also exist for there to be a meal reimbursement entitlement and since there were no lodging expenses in this case, the Claimant would not be entitled to the meal expense reimbursement.

However, the word "and" has another meaning and usage. The word "and" "can be used to connect alternatives". The Random House Dictionary of the English language, *supra*. Another word that is "used to connect words, phrases, or clauses representing alternatives" is the word "or". The Random House Dictionary of the English language, *supra*. Therefore, the word "and" does not preclude a result which could also result from use of the word "or" – i.e., that the meals benefit can exist without a companion lodging expense caused by overnight travel as an alternative entitled to reimbursement.

The Carrier's interpretation appears stronger, but the existence of a meal expense without a companion lodging expense or overnight travel requirement is not a clear preclusion of the right of reimbursement for the meal expense benefit without a companion lodging expense or overnight travel requirement. That was the conclusion reached in Third Division Award 20545 where the language "[w]here meals and lodging are not furnished by the Carrier ... employees will be paid necessary expenses" was interpreted to mean that the phrase "does not expressly and

unambiguously preclude noon meal payments such as are here involved, no more than it expressly required them.”

For the Carrier to prevail on clear contract language, Rule 28(g) would need to read something like [added language underscored]:

“(g) Where meals and lodging are not furnished by the Management and when the service requirements make the purchase of meals and lodging necessary while away from headquarters, employees will be paid necessary expenses. Meal expenses will not be paid unless overnight travel is required.”

However, Rule 28(g) does not read that way.

Contract language which at first seems clear may contain a “latent” ambiguity. Third Division Award 33458 (“... seemingly clear and unambiguous language can be rendered unclear and ambiguous by operation of a latent ambiguity ...”). From a reading of Rule 28(g), is it clear that the negotiators of that rule meant that overnight travel must exist with lodging expenses before meal expenses would be reimbursed by the Carrier or was the phrase “meals and lodging” meant as an alternative and the lack of one did not mean exclusion of the other?

Both interpretations are plausible. And where “[b]oth interpretations are plausible ... [t]he language is therefore ambiguous.” Third Division Award 34024. The Carrier’s Division Engineer’s August 30, 2017 message underscores that even the Carrier viewed its present and prior interpretations plausible when he wrote “[t]here is a new interpretation of expenses for inspectors ... [which] is different than what we have done for the last 52 years” [emphasis added].

Thus, the Board is dealing with what amounts to ambiguous language.

Past practice is used to interpret ambiguous language. Third Division Award 35457 (“... another tool of Contract Construction is to look to how the parties have interpreted the disputed language in the past”). See also, Third Division Award 34207

“... One of the strongest tools for interpreting ambiguous contract language is past practice. Because the burden is on the Organization to

support its interpretation, the Organization must show the existence of a claimed past practice. ...

To be a past practice, the conditions in dispute must be unequivocal, clearly enunciated and acted upon and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. ...”

An admitted 52-year practice of reimbursing employees for meal expenses without the need for a companion lodging expense caused by overnight travel is obviously a past practice therefore explaining the intent of the meaning of Rule 28(g) to be consistent with the Organization’s position in this case that the Claimant was entitled to reimbursement of his meal expenses even though he returned to his headquarters without incurring lodging expenses from overnight travel.

Based on the above, by not paying the Claimant for his meals, the Carrier violated Rule 28(g). For a remedy, the Claimant shall be made whole for those unpaid expenses.

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 31st day of October 2023.