PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 1540

Parties to Dispute: Illinois Central Gulf Railroad

and

International Brotherhood of Electrical Workers

Statement of Claim: Can the Carrier discontinue the payment of meal expenses of the Employes on days when they are away from their Headquarters at meal time, but they start and end their workday at their Headquarters.

If the decision is no, the Carrier be ordered to pay all the employes for such meals that were not paid by the Carrier.

Findings: The Board, upon the record as a whole and all the evidence, finds that the parties hereto are Carrier and Employe within the meaning of the Railway Labor Act, as amended; that it has jurisdiction and that the parties were given due notice of hearing.

On December 16, 1974 the Carrier, in a letter over the signature of the Manager of Labor Relations, advised the general chairmen of the various non-operating unions, including the claimant herein, as follows:

> "The Internal Revenue Service has ruled that meals are not a reimburseable expense unless overnight travel is involved.
>
> "Therefore, except where provided for by agreement, effective January 1, 1975, the company will not reimburse employees for meals when an employee starts and ends his workday at his headquarters."

This letter was followed by a "Bulletin Notice", dated December 18, 1974, from the Director, Communications to "All Communication Workers", which reads as follows:

"The Internal Revenue Service has ruled that meals not connected with an overnight lodging away from home are not a reimburseable expense.

"Therefore, effective January 1, 1975, employees will not be reimbursed for meals when they start and end their work day at their headquarters."

The instructions in the above noted communications were protested by the Organization which requested that the Carrier return to the past practice of paying for meals while away from headquarters under the agreement. The Carrier in its letter of February 13, 1975, in reply to the letter of January 31, 1975 from the General Chairman, stated in part:

"Apparently, our difference of opinion concerning meal allowances is simply a matter of defining "necessary expenses". The Internal Revenue Service has ruled that the purchasing of meals only becomes a "necessary expense" when the employee is required to secure away-from-home lodging for the night. Your interpretation of Rule 17 as outlined in your letter does not entail the reimbursement of "necessary expenses" but, in actuality, it entails the dispensing of additional income. Furthermore, it is obvious that your interpretation is based on past practice, however, past practice cannot nullify the clear stipulation of a rule."

In that letter the Manager of Labor Relations suggested that if the Organization was not satisfied with Carrier's position the requirement of handling at lower levels would be waived and such matters could be submitted to him.

The Internal Revenue Service ruling referred to in Carrier's communications dated December 16 and 18, 1974 is found in the instruction book entitled "Your Federal Income Tax", IRS Publication No. 17 (1975) on pages 69 and 70.

Pursuant to the communications of December 16 and 18, 1974, Carrier did not pay for meals during the month of January 1975 but resumed doing so in February 1975. Thereafter, the parties agreed to have the matter resolved by this Board.

Because of the merger of the Illinois Central Railroad and the Gulf, Mobile and Ohio Railroad several agreements are involved in this dispute which pertains to all electrical workers who perform road work on the property. The Organization relies on Rule 12 and 16, Illinois Central Railroad (Section A Agreement); Rule 22, 7, 9, 11 and 12, Gulf, Mobile and Ohio Railroad Company (Section A Agreement); Rule 12C and 17, Illinois Central Railroad (Section B Agreement); and Article 4, Gulf, Mobile and Ohio Railroad (Section B Agreement). At the hearing the parties agreed that Rule 12, effective April 1, 1935, Illinois Central Railroad Company (Section A Agreement), was representative of all the rules involved as all deal with the same subject and are essentially the same. Thus it would not be necessary to reproduce all the Rules in this decision. Rule 12 reads as follows:

> "Where meals and lodgings are not provided by the railroad, actual expenses will be allowed and employees will receive all expense allowance not later than the time they are paid for services rendered."

However, reference is made to Rule 17 in Carrier's letter of February 13, 1975. It is part of the Illinois Central Railroad (Section B Agreement), effective April 1, 1935 and

while it is essentially the same as Rule 12, quoted above, it will be reproduced here for clarity. Rule 17 follows:

> "Where meals and lodging are not furnished by the railroad, or when the service requirements make the purchase of meals and lodging necessary while away from home point employees will be paid necessary expenses."

The Organization disputes Carrier's right to use the instructions for preparing tax returns in the above noted IRS publication as a basis for varying the terms of the agreements. Moreover, the Organization urges that the relied on Agreement provisions and the past practice under them require Carrier to follow the procedures of the Railway Labor Act, as amended, before changing the working conditions of the employees.

Carrier on the other hand argues that the IRS ruling or instruction is relevant to the dispute and contends that unless an overnight stay is involved meals are not necessary expenses. It relies on the statement in the IRS instruction which says "only when you are traveling away from home overnight on business" are meals and lodging deductible. Carrier also argues, that the aforementioned Rules 12 and 17 do not require the payment of meals where an overnight stay is not involved and the past practice of paying for such meals cannot nullify the clear provisions of the Rules. Carrier alleges further that the term "meals and lodging" must be read as an entity so that no liability for paying for meals arises unless lodging is also required.

The parties have submitted Awards from this as well as other Divisions bearing on the question of the effect

of past practice. These citations are not dispositive as each case turns on the peculiar facts present in each dispute. However, to the extent that these cases stand for the proposition that a clear and unambiguous rule cannot be changed by a practice and that a practice can shed light on the intent of the parties where an unclear or vague rule is involved, they are relevant and we will follow the teachings therein.

There is no dispute as to the practice of paying for the meals involved. There is no dispute that the practice of doing so goes back a substantial period of time. Whether it goes back to a period before 1935, as the Organization contends, is irrelevant as a practice dating from approximately forty (40) years is a substantial period of time and negates, on its face, the validity of the argument raised by Carrier that the payments for such meals were gratuities. In fact, the two claims mentioned in the record involving meal payment where employees returned to headquarters at the end of the day were settled in favor of the Organization. These settlements in 1967 and 1968 serve to reinforce the parties' interpretation of the Rules involved as they were settled based on the fact that Carrier's survey revealed there was a practice of paying for such meals.

Examining the Rules in question, we find that the payment of meals where an employee returns to headquarters at the end of the day is not specifically prohibited. In fact the Rules are silent on this point. In the Rules Carrier

undertakes to provide "meals and lodging". When it does not it agrees to reimburse the employees for "expenses" or "necessary expenses". The Rules, therefore, can be said to be vague and uncertain as to Carrier's liability in cases where the employee returns to headquarters at the end of the day. In such a situation he would not have incurred lodging expense but it is altogether possible that he would expend money on meals. The practice of such long duration of paying for such meals will resolve the dilemma. The parties by their actions over the years intended the ambiguous Rules, here involved, to provide for the payments sought by the Organization.

Carrier's argument that the expression "meals and lodging" requires an overnight stay would have some validity were it not for the practice of considering meals and lodging separately, i.e., paying for meals when there was no lodging involved. Moreover, the term "meals and lodging", in the absence of specific limitations such as "When employee are unable to return to their headquarters..." or other appropriate words of limitation, might be construed as a statement of the extent of Carrier's liability to employees in the event it did not provide the accomodations it agreed to provide in the Rules. In the face of the historical practice it cannot be said that "meals" would be paid for only when "lodging" was required. (Compare Award 18971, THIRD DIVISION.)

There remains for consideration the proximate cause of this dispute -- Carrier's interpretation of the IRS instruction to taxpayers concerning necessary expense where overnight stays are not involved to the effect that meals cannot be paid for unless an overnight stay is involved. This Board, of course, is not qualified to discuss nor to interpret IRS rulings and it does not attempt to do so. However, we reject Carrier's contention that the IRS definition of no "necessary expenses" without an overnight stay resolves the issue. It is noted that nothing in the IRS instruction, on which Carrier relies, forbids the payments sought by the Organization. The instructions merely delineate the tax liability which may arise from certain reimbursements. Therefore, we hold that the IRS's definition of "necessary expenses" as well as the tax liability of Carrier and employee arising from payments made and receipt of such payments to be irrelevant to these proceedings.

On the basis of the foregoing, we will find that Carrier's discontinuance of paying for meals pursuant to its communications of December 16 and December 18, 1974 was in violation of the Agreements.

Accordingly, we will order that

1. Carrier cannot, under the applicable Rules discontinue the payment of meal expense to employees on days they are away from their headquarters at meal times but they start and end their workday at their headquarters.

2. Carrier will reimburse employees for the cost of meals withheld during the month of January 1975. (The proofs herein show such payments were made except for January 1975.)

ORDER: Carrier will rescind its letter of December 16, 1974 as it affects the herein Organization and the Bulletin Notice dated December 18, 1974, by appropriate written notice not later than July 15, 1975.

Carrier will reimburse employees who incurred relevant meal expense in January 1975 not later than thirty (30) days from date hereof.

Clement P. Cull

Clement P. Cull, Neutral Member

E. J. McDermott

E. J. McDermott, Employee Member

R. G. Richter

R. G. Richter, Carrier Member

DATED: JULY 1, 1975
Chicago, Ill.