

PUBLIC LAW BOARD NO. 2206

AWARD NO. 48

CASE NO. 37

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the effective Agreement May 2, 1978, when it failed and refused to reimburse Water Service Foreman H. H. King for noon meal expenses incurred in March and April 1978 when away from his headquarters in Portland, Oregon. (System File P-P-387C)
- (2) The Carrier now pay Claimant King the sum of \$62.08 because of the violation referred to in part one (1) of claim.

OPINION OF BOARD:

Claimant is a regularly assigned Water Service Foreman in the B&B Subdepartment, headquartered at Portland, Oregon. Originally he was employed by the SP&S Railroad and is a "protected employee" under the Collective Bargaining Agreements between these parties. In that connection, the Organization originally processed the claim on allegations of violation in several agreements covering former SP&S and current BN employees, but late in handling interjected an alternative assertion that the Merger Protection Agreement (MPA) also was violated. Since the alleged violation of MPA were raised de novo at the Board level and because Section 9 of that Agreement grants jurisdiction to an Arbitration Committee for disputes regarding its interpretation or application, we shall not reach that issue herein. Thus,

our decision is restricted to whether Carrier violated Rules 1(c) and 69(c) or Rule 36 of the present BN/BMWE Agreement; Rule 38(a) of the former SP&S/BMWE Agreement; or Item 2 of the March 17, 1971 Agreement between these parties. The referenced rules and contract provisions read as follows:

RULES 1C and 69C.

"1C. This Agreement does not apply to employees in the Signal, Telegraph and Telephone Maintenance Departments, nor to clerks. The sole purpose of including employees and sub-departments listed herein is to preserve pre-existing rights accruing to employees covered by agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S railway companies prior to date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging companies which were in effect prior to the date of merger." (Underscoring added)

"69C. It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Companies which were in effect prior to the date of merger."

* * *

"RULE 36. EXPENSES

"A. Employees, other than those covered by Section B of this rule, will be reimbursed for cost of meals and lodging incurred while away from their regular outfits or regular headquarters by direction of the Company, whether off or on their assigned territory. This rule not to apply to mid-day lunch customarily carried by employees, nor to employees traveling in exercise of their seniority rights.

"NOTE: It is understood that the phrase 'mid-day lunch customarily carried by employees' applies to those employees whose program of work takes them out and back each day so that they can eat their morning and evening meals at the headquarters and prepare their lunch before leaving in the morning. Also that under those circumstances an employee is not entitled to reimbursement for noon day meal regardless of where he eats it. On the other hand, an employee whose duties take him away from headquarters and/or regular outfit for lodging will be reimbursed for the cost of all regular meals away from headquarters or outfits the day he leaves as well as other days while on a trip."

RULE 38(a)

"Employees will be reimbursed for the cost of meals and lodging incurred while away from their regular outfits or regular headquarters by direction of the management, whether off or on their assigned territory.

"This rule not to apply to mid-day lunch customarily carried by employees nor to employees traveling in exercise of their seniority rights."

MEMORANDUM OF AGREEMENT

BETWEEN

BURLINGTON NORTHERN INC.

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

IT IS AGREED:

* * *

2. If there are any instances where "present employes" were subject to the provisions of a rule providing for additional compensation or expenses as set forth in such rules on the previous existing railroad, and such rule is not carried forward in the new collective agreement for the Burlington Northern Inc., then the benefits of such preexisting rule will continue to be applied to those "present employes" to whom such rules were previously applied, under the conditions stated therein, but not to any other employes.

* * *

From the record evidence we may conclude that as an employe of the former SP&S Mr. King was for many years reimbursed when he submitted vouchers for his noon meal expenses, whether or not he was away from headquarters overnight. The record also supports a conclusion that after merger date in 1971 he continued to submit expense vouchers for his noon meals and continued to be reimbursed by the merged Carrier until 1978. When Claimant submitted his expense vouchers for March and April 1978, Carrier disallowed and did not reimburse \$62.08, which represented 21 days of lunch or noon meal expenses. On June 6, 1978 the Organization filed the present claim alleging violation of Rules 1(c) and 69(c), Rule 38(a) of the SP&S Agreement, and Item 2 of the March 17, 1977 Agreement, supra.

Turning first to Item 2 of March 17, 1971 Agreement it is apparent to us that this clause does not govern the case because examination shows that Rule 38(a) of the former SP&S Agreement has been "carried forward" virtually verbatim in Rule 36 of the BN Agreement. With respect to Rule 36 itself, the express and unambiguous language of that Rule speaks against the present claim for reimbursement of all noon lunch expenses but supports so much as seeks reimbursement on those days when the employe's duties took him away

from headquarters for lodging. The record before us shows that Claimant indeed was away from headquarters on business over night on April 12, 1978 and April 19, 1978. Yet Carrier declined to reimburse his lunch expenses on those days. We find that this was a violation of Rule 36 and accordingly we shall sustain the claim in the amount of \$6.10. The balance of the disallowed lunch expense claims are not allowable under Rule 36 of the present Agreement. The only arguable support therefore would be in Rules 1(c) and 69(c), incorporating by reference Rule 38(a) of the former SP&S Agreement.

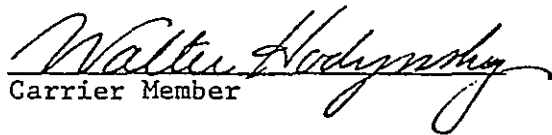
We do not doubt that Claimant was paid noon lunch expenses under that old rule, but standing alone this does not end the inquiry. Such practice becomes relevant and could be controlling if the contract language in Rule 38(a) was silent or ambiguous on the disputed point. But even a practice of long-standing cannot prevail over clear and unambiguous contract language since the practice is taken as circumstantial evidence of an implied intent but plain language is the best indicator of the direct meaning and intent of the negotiators. Thus, the initial step to determine whether Claimant had a "pre-existing right" to reimbursement for all noon lunch expenses, which could be preserved by Rule 69(c), is to determine whether Rule 38(a) on the former SP&S was silent or ambiguous on the subject of such reimbursements. Close examination of the Rule shows that it did speak expressly to the issue by excepting from reimbursement expenses for mid-day meals customarily carried by employees. The latter phrase has been interpreted to mean that an employee who had the opportunity to carry his lunch from home in the morning, even if he chose to buy his lunch, should not be reimbursed for the cost of such lunch. See PLB 1844-25. We conclude that the language of former Rule 38(a), just as present Rule 36, precluded noon meal expense reimbursement unless the employee lodged away from headquarters.

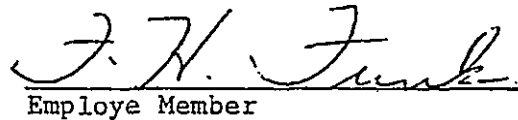
Accordingly, the practice under Rule 38(a) is not controlling and could not create a pre-existing right which was preserved in Rules 1(c) and 69(c).

Based upon our finding Rule 36 of the present Agreement is controlling and Carrier did violate Rule 36 by declining reimbursement for noon meals on April 12, 1978 and April 19, 1978 when Claimant was away overnight. Therefore we shall sustain the claim for the amount of \$6.10.

AWARD

Claim sustained to the extent indicated in the Opinion.


Carrier Member


Employee Member


Dana E. Eischen, Chairman

Date: 10/1/8