

PUBLIC LAW BOARD NO. 3460

Award No. 12
Case No. 12

PARTIES
TO
DISPUTE

Burlington Northern Railroad Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) That Carrier violated the effective agreement when declining to reimburse Section Foreman Brad L. Fluck \$6.25 claimed on his September 1980 expense account.
- (2) Section Foreman Brad L. Fluck now be allowed the \$6.25 expense for September 1980 denied by his Roadmaster."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, Section Foreman Fluck, and his crew started working at 8:00 A.M. on September 4, 1980, at their headquarters at Elk River, Minnesota. The crew worked until 9:30 P.M. that night at Big Lake, Minnesota, on a highway crossing. The work in question, without dispute, was not considered to be an emergency but was urgent work which had to be completed. It was for this reason that Carrier kept the crew over and had them on overtime. Claimant ate his Noon meal, which he customarily carried in compliance with Rule 28. The men were entitled to a second meal after ten hours of work in accordance with Rule 29F. In this instance, the men were allowed a meal allowance for the second meal time and they went to a restaurant to eat. While the thirty-minute meal period was allowed without a reduction in pay, Carrier refused to reimburse claimant for the cost of the meal which was \$6.25.

Petitioner notes that Rule 29F provided for the second meal time and was complied with. In this case the controlling rule was 36A which provides as follows:

"RULE 36. EXPENSES

A. Employees, other than those covered by Section 8 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."

Petitioner notes that claimant herein was on his assigned territory but not at his headquarters point at Elk River at the time of his meal time. Therefore, according to the Organization, the claimant was away from his assigned headquarters by direction of the Company and should have been reimbursed as indicated in Rule 36A. No emergency work was required and Carrier readily concedes that Rule 29F was applicable in the sense of the second meal time. The Organization contends that prior to 1980 Carrier had complied with these rules and had reimbursed employees for expenses incurred when a second meal was taken on or near the tenth hour after commencing work. It was only with this situation that Carrier began to refuse to abide by the provisions of Rule 36A, according to the Organization. The Organization relies in part on Second Division Awards 9445 and 9446 which are almost identical to the claim herein. Those awards provide that a similar rule does not indicate whether in terms of being away from a headquarters point the distance is 3 miles or 10 miles, since no specific distance is provided for in the agreement. Similarly, in this situation, neither Rule 29 nor Rule 36 indicate a specific distance which an employee must be away from his regular outfit or headquarters in order to be permitted reimbursement for a meal. In fact, the

Organization insists that Rule 36A makes it mandatory that an employee will be reimbursed for the cost of meals (except those covered by the Note.) According to the Organization the only exceptions to the reimbursement for meals as provided for in Rule 36A are those which are related to the mid-day lunch customarily carried by an employee, when that employee returned to his headquarters during his regularly assigned hours and, further, when employees are exercising seniority. The Organization notes that there is no indication of the tenth hour meal or other meals in the Note to Rule 36A and the intent of the rule cannot be misconstrued. It is also clear, according to the Organization, that Rule 36A relates to a situation in which an employee is reimbursed for the cost of meals and lodgings whether off or on their assigned territory.

Carrier takes the position that the expense account for claimant's meal was properly declined. First, Carrier argues that the Organization has failed to carry its burden of proof because it has not indicated a provision in the agreement which supports its contentions. Carrier notes that Rule 28 is not applicable to this particular situation since there was clearly no emergency work and none was contended for by the Organization. None of the overtime can be construed to be emergency work. The work can be characterized as overtime work which had been scheduled and programmed in the past. Carrier does not dispute the fact that claimant was entitled to a second meal period under the terms of Rule 29F. However, that rule does not provide the reimbursement of expenses to the employee as in the case of emergencies. Thus, that rule provides no support for the claim herein. With respect to Rule 36, Carrier maintains that it is applicable only insofar as the claimant is away from his headquarters. However, in this case, Carrier notes, that claimant started working at Elk River, which was his headquarters, in the morning and returned there that evening. Thus, under the terms of the rule, that activity was insufficient for claimant to insist that he was away from his headquarters and, therefore, entitled to reimbursement for meal expenses. Referring to the Note to Rule 36, Carrier makes a point that it is necessary for an employee to be unable to return to his headquarters in the evening, that is to be away overnight, in order to be eligible for meal expenses. This was not true in this instance. since claimant began and ended his tour of duty at his headquarters on the same day. In support of its position, the Carrier relies in part on Award No. 48 of Public Law Board No. 2206 involving the same

parties. Carrier argues that that award properly construed the provisions of Rule 36A. In that award the Board agreed, according to Carrier, to sustain only that part of the claim for meal expenses incurred on days when claimant was unable to return to his headquarters. The analogy in this case is clear, according to Carrier, and since the evening meal was claimed on a day when claimant was going back to his headquarters, he was not entitled to reimbursement. All that was required, according to Carrier, was to pay for the meal time of thirty minutes when the tenth hour meal was taken. Among other arguments, Carrier also makes the point that Petitioner has not sustained its position that such expenses had been paid for in the past.

It must be noted initially that Carrier raised certain arguments with respect to national negotiations and the intentions of the Organization in those negotiations with respect to the issue herein. The discussion with respect to the national priorities was not raised during the handling of this claim on the property and must be considered to be new evidence and new argument and may not be considered herein.

There is no dispute with respect to the fact that no emergency existed in the instant situation. The sole question confronting the Board, both parties readily agree, is the construction of Rule 36. Clearly the employee involved was entitled to a meal period which he received. Whether he is entitled to the expenses of that meal is the sole question in this dispute and others to follow. It must be noted that Carrier's reliance on Award No. 48 of Public Law Board No. 2206 with respect to Rule 36 is misplaced. That award dealt solely with the question of noon day meals and that award correctly interpreted Rule 36 with respect to noon day meals in conjunction with the question of lodging and time away from headquarters. That interpretation, however, is not relevant to the dispute herein.

The Organization in its arguments insists that Rule 36A is controlling but takes that rule and extends it beyond the point which this Board believes to be appropriate. The Organization has stated:

"The intent and directive of this Rule 36A is, to reimburse employees covered by said agreement regardless of where employees are working, even

if they are at their designated assembly point (headquarters), if held on duty by direction of the Company."

The Board believes that Rule 36A specifically precludes payment of expenses for meals if employees at the time the meal occurs are at the headquarters. The provisions of Rule 36A specifically indicate that the reimbursement is only for costs incurred "while away from their regular outfits or regular headquarters by direction of the Company". Thus, being held on duty by direction of the Company is not sufficient (even though on overtime requiring a meal) to cause reimbursement if the employee is at the headquarters point.

What then does this rule mean in relation to the dispute in question? As the Board views it, Carrier takes the position that the only time that an evening meal may be covered by Rule 36A is when an employee is away on a trip and requires lodging, as well as meals, because of the trip. For this reason, Carrier relies on the last sentence of the Note to Rule 36. Such an interpretation of the rule, however, as the Board views it, is erroneous. It is clear from the body of Rule 36A that the reimbursement for meals is not restricted to a trip. The two conditions specified in Point A of Rule 36 are that the employee must be away from his regular outfit or headquarters and it be by direction of the Company, together with the fact that it may be on or off the assigned territory. As the Board views it, the sole purpose of the Note to the rule, as its clear language indicates, is to interpret the prior provisions with respect to the mid-day meal. If the Carrier were correct, there would be no significance whatever to any of the provisions under A except if an employee were away and required lodging. Therefore, there would be no meals reimbursed unless there was lodging due to there being a trip. This would be contrary to the language of the rule. It is apparent that an employee while on duty away from his headquarters or regular outfit, on his assigned territory or off his assigned territory, may be reimbursed for a meal under other circumstances (Rule 29) except for the noon day meal. The noon day rule exception, which is also interpreted in the Public Law Board Case (Award No. 48, supra), deals only with the question of a noon lunch. Therefore, as the Board views it, the agreement must be applied as written. In the case at bar claimant was, at the direction of Carrier, required to work

overtime through an evening meal period and it was away from his headquarters. He was accorded the time for the meal and should also have been reimbursed for that meal in accordance with the language of Rule 36A. Past practice is not relevant since the language itself is clear and unambiguous and must be construed as written.

AWARD

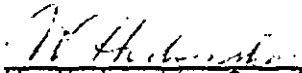
Claim sustained..

ORDER

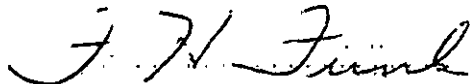
Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F. H. Funk, Employee Member

March 29, 1985