

PUBLIC LAW BOARD NO. 3460

Award No. 58
Case No. 58

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "1. The Carrier violated the effective agreement commencing April 6, 1981, and each date thereafter, by not allowing Meal and Laundry allowances and lodging expenses for employees assigned to Tie Gang 723-900.
2. The Claimants W. Morley, D. Erie, R. Reasor, R. Fister, W. Lamey, P. Chamberlin, B. BRuce, W. Spoonmore, N. Peine, A. Krone, C. Christ, D. Anderson, L. Oestreish, E. Braun, D. Glasgow, W. Hogue, E. Young, L. Wright, G. McClaine, D. Tinsley, S. Olsen and those assigned at a later date each be allowed calendar day \$5.25 meal and 20¢ laundry allowance. The Claimants are also to receive \$7.00 lodging expense for each day worked."

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.

The record indicates that Tie Gang 723-900 had been bulletined with headquarters at Davenport, Washington, in May of 1980 for the 1980 work season. That work season ended about October of 1980 and the gang was abolished. A gang with the same number was bulletined and headquartered at Athol, Idaho beginning work on April 6, 1981 (see Award No. 57). The Organization

alleges that the Carrier violated rule 38 by its actions in this instance. Rule 38 provides in sections A, B, C and F as follows:

" Rule 38. Outfit Cars-Lodging-Meals

A. Other than as provided in Rules 37 and 39, the Company shall provide for employes who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in outfit cars, camps, highway trailers, hotels or motels as follows:

(1) If lodging is furnished by the Company, the outfit cars or other lodging furnished shall include bed, mattress, pillow, bed linen, blanket, towels, soap, washing and toilet facilities.

(2) An expense allowance for furnishing and laundering pillows, bed linens, blankets and towels in the amount of twenty (20) cents will be allowed for each day that per diem meal allowance is paid. In the event the Company arranges to furnish and launder pillows, bed linens, blankets and towels; this expense allowance will not apply.

B. Lodging facilities furnished by the Company shall be adequate for the purpose and maintained in a clean, healthful and sanitary condition.

C. If lodging is not furnished by the Company the employe shall be reimbursed for the actual reasonable expense thereof not in excess of \$4.00 per day....

F. If the employes are required to obtain their meals in restaurants or commissaries, each employe shall be paid a meal allowance of \$4.00 per day."

The Organization contends that assignment of Tie Gang 723-900 required employees throughout their work week to live away from home in outfit cars, camps, highway trailers, hotels or motels. Therefore rule 38 would become applicable. The Organization

notes that the rates provided for in rule 38 C and F have been increased by national agreement. The Organization notes further that the same gang worked at Athol, Idaho through June 15th and then from June 16th to July 8, 1981, at Whitefish, Montana. While at Whitefish, Montana, the members of the gang were entitled to and did indeed receive the allowances provided for in rule 38.

The Organization alleges that the Carrier in this instance is attempting to circumvent rule 38 to avoid payment of blanket and linen allowance and also is attempting to avoid payment of meal and lodging expenses under that rule. The Organization argues that such action is an improper transfer of employees based upon Arbitration Award No. 298, and the interpretations thereto. In essence, the Petitioner argues that Claimants were in a type of service which regularly required them throughout their work week to live away from home in outfit cars, trailers, hotels or motels.

Carrier maintains that claimants did not qualify for any of the allowances or expenses listed in rule 38. The Carrier argues that the character of the services performed while they were assigned at Athol were such that it did not require them throughout their work week to live away from home. Only under that circumstance would they be eligible for the allowances under rule 38. The Carrier insists that the Petitioner has not borne its

burden of proof in establishing that the employees involved were indeed suffering from a lack of compliance with rule 38. In support of its position, Carrier notes that rule 38, even if it were applicable cites the fact that if lodging is not furnished, the employee shall be reimbursed for the actual reasonable expenses; in this instance, there was no evidence of any actual reasonable expense. The Carrier insists that this is true because the employees lived at home. Similarly, under paragraph F of rule 38, the rule provides "If the employees are required to obtain their meals in restaurants...." they shall then receive a meal allowance. Again, there was no proof or any evidence that employees were required to obtain their meals in restaurants, according to Carrier. Carrier maintains that claimants simply were not employed in the type of service which required them throughout their work week to live away from home. Furthermore, Carrier indicates that the number of the Tie Gang was the same as that of the previous gang for accounting purposes and was in fact a new gang with wholly new personnel, as well as a new assignment. There is nothing in the agreement which could preclude Carrier from establishing a new gang with the same time roll number with a fixed headquarters point, according to carrier.

An analysis of the record indicates to this Board that the

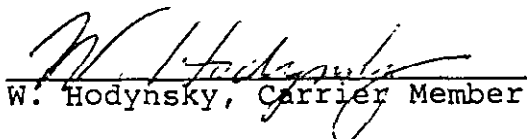
Petitioner has not borne its burden of proof in this dispute. There is no evidence whatever in the record to indicate in what manner violated rule 38. In short, the Organization has not shown that the claimants were required to live away from home, and there was no evidence of any expenses attributed to the living arrangements of this particular gang. It must be concluded that there was no evidence whatever to show that there was a violation of rule 38 even if this gang were the same as that which had existed in the prior year. The Organization had not proved a violation of the agreement by any factual presentation. The claim must be denied.

AWARD

Claim denied.



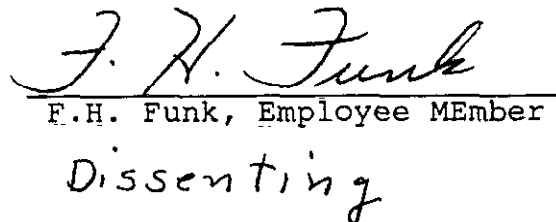
I.M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member

St. Paul, Minnesota

December 14, 1986



F.H. Funk, Employee Member
Dissenting