NATIONAL MEDIATION BOARD, ADMINISTRATOR
SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 5987

In the Matter of the Arbitration -between- Brotherhood of Maintenance of Way Employes -and- CSX Transportation, Inc.	OPINION AND AWARD

In accordance with the February 24, 1997 agreement in effect between the above-named parties, the Undersigned was designated as the Chairman and Neutral Member of the referenced Board to hear and decide a dispute concerning a laundry allowance.

A hearing was held at the offices of the National Mediation Board in Washington, District of Columbia on July 29, 1997 at which time the representatives of the parties appeared. All concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses consistent with the Agreement that created the Board. The Arbitrator's Oath was waived.

THE QUESTION AT ISSUE

The parties failed to stipulate an issue to be resolved by the Board. The parties authorized the Board to formulate an appropriate issue. The Union proposed the following issue:

> Do existing agreements and practices permit the Carrier to unilaterally discontinue paying $2.00 per week to maintenance of way employes who are entitled to have their

> laundry done by the Company in accordance with the provisions of the Award of Arbitration Board No. 298?

The Carrier proposed the following issue:

> Did the Carrier violate Appendix No. 18 of the BMWE-CSXT (formerly L&N) working agreement when it failed to allow employee expense requests for laundry allowance when bed linens and towels were laundered by a lodging provider beginning on or about November 25, 1996?

On the basis of the arguments of the parties and a careful review of the entire record, the Board deems a fair statement of the issue to be:

> Did the Carrier violate existing agreements and/or practices--including Appendix No. 18 of the BMWE-CSXT (formerly L&N) working agreement and/or the Award of Arbitration Board No. 298--by discontinuing the payment of the $2.00 per week laundry allowance sought in certain employee expense requests by certain maintenance of way employees beginning on or about November 25, 1996? If so, what shall be the remedy?

With respect to a potential remedy, the record indicates that the parties reached the following agreement:

> If the Award of the Board is in favor of the BMWE, CSXT shall promptly pay all claims pending as of the date of this Agreement for the allowance provided in Appendix No. 18 to those maintenance of way employees who are entitled to have their laundry done by the Company in accordance with the provisions of Award of Arbitration Board No. 298; if the Award of the Board is in favor of CSXT, BMWE shall promptly withdraw all claims pending as of the date of this Agreement for the allowance provided in Appendix No. 18.

PRELIMINARY FINDINGS OF FACT

The Union represents certain maintenance of way employees of

the Carrier. The Union initiated a federal lawsuit against the Carrier by filing a Complaint and Summons, dated December 30, 1996, to seek declaratory and injunctive relief to prohibit the Carrier from allegedly unilaterally discontinuing the payment of a laundry allowance to certain employees and from attempting to recoup payments that some employees allegedly had received for the laundry allowance. The parties executed an agreement, dated February 18, 1997, to end the federal litigation by submitting the dispute to the present Special Board of Adjustment pursuant to Section 3 Second of the Railway Labor Act.

PERTINENT PROVISIONS

AWARD OF ARBITRATION BOARD NO. 298
September 30, 1967

I. The railroad company shall provide for employees 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 camp cars, camps, highway trailers, hotels or motels as follows:

A. Lodging

1. If lodging is furnished by the railroad company, the camp cars or other lodging furnished shall include bed, mattress, pillow, bed linen, blanket, towels, soap, washing and toilet facilities.
2. Lodging facilities furnished by the railroad company shall be adequate for the purpose and maintained in a clean, healthful and sanitary condition.
3. If lodging is not furnished by the railroad company the employee shall be reimbursed for the actual reasonable expense thereof not in excess of $4.00 per day.

INTERPRETATION NO. 33

QUESTION: Can Carriers escape the responsibility of laundering bed linen, towels, etc., when the Brotherhood accepted I-A-1 and I-A-2?

ANSWER: No.

5987-1

Appendix No. 18
June 21, 1968

In our conference on June 20, 1968, it was agreed, effective as of July 1, 1968, that maintenance of way employes who are entitled to have their laundry done by the Company, in accordance with the provisions of Award of Arbitration Board No. 298, will do their own laundering, for which they will be compensated at the rate of $1.00 per week.

Agreement between the Louisville and Nashville Railroad Company
and its Maintenance of Way Employes
covering Rules, Working Conditions and Rates of Pay
Effective October 1, 1973

RULE 47. TRAVEL TIME AND EXPENSES

I. The railroad company shall provide for employees 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 camp cars, camps, highway trailers, hotels or motels as follows:

(A) Lodging

(a) 1. If the lodging is furnished by the railroad company the camp cars or other lodging furnished shall include mattresses, pillows, bed linen, blankets, towels, soap, washing, bathing and toilet facilities, stoves, kitchen and dining utensils and dishes, chairs, lockers and spring cots.

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

3. If lodging is not furnished by the railroad company the employe shall be reimbursed for the actual reasonable expense thereof.

MEMORANDUM OF AGREEMENT
MARCH 4, 1993

Section 1
Employees employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home, who have previously been entitled to "actual necessary expenses" and/or "actual reasonable expenses" under provisions of the Schedule Agreement will hereafter be provided lodging (hotels, motels, or other FRA approved housing) and a meal allowance of $96.00 per work week. When lodged in hotels or motels, no more than two (2) employees will be lodged in a room containing two (2) beds. Travel expense will continue to be claimed on the applicable expense account form.

Section 5
To the extent that this agreement may conflict with provisions of the Schedule Agreement between the former Louisville and Nashville Railroad Company and its Maintenance of Way Employes, the provisions of this agreement will prevail.

POSITION OF THE UNION

The Union asserts that the Carrier improperly and unilaterally stopped paying employees the laundry allowance. The Union maintains that Appendix 18 clearly and unambiguously granted the employees the right to receive $1.00 per week (subsequently increased to $2.00 per week) in return for the Carrier no longer having the responsibility to perform the laundering work. It is the position of the Union that the right of the employees to receive the laundry allowance exists regardless of whether the Carrier permits the employees to perform the work.

Unlike certain expense provisions in Rule 47 that vest the Carrier with discretion, the Union comments that Appendix No. 18 fails to create any discretion for the Carrier to decide whether to pay the employees the mandatory laundry allowance. Although the Union discerns that past practice lacks applicability to the present dispute, the Union observes that the longstanding past practice--retained during a series of renegotiations of the away-from-home expenses provisions--substantiates that the employees have a right to receive the laundry allowance, even when a lodging provider launders the bed linens and towels. In the context of the special collective bargaining process in the railroad industry, the Union emphasizes that the present Board

lacks authority to serve an interest arbitration role or to dispense equity.

The Union points out that a lengthy history exists about the laundry expense allowance. The Union indicates that in 1967 Arbitration Board No. 298 provided certain artificial allowances for away-from-home expenses. According to the Union, Arbitration Board No. 298 subsequently issued an interpretation, ultimately embodied in Rule 47, that obligated the carriers to provide bed linen, towels, and other items if the carriers provided lodging. The Union posits that the Louisville and Nashville Railroad Company found the duty of providing the bed linen and towels to be burdensome and negotiated an agreement, which became Appendix No. 18, that relieved the company of the laundry duty and transferred to the employees the responsibility for doing their own laundering. The Union relates that a trend developed by the early 1990's whereby carriers phased out the camp cars that had housed the affected employees and arranged to lodge the employees in hotels and motels at discounted rates. After the Carrier completed the transition to hotels and motels in 1992, the Union reveals that the parties negotiated a memorandum of agreement, dated March 4, 1993, which addressed certain aspects of lodging employees in hotels and motels. The Union underscores that the Carrier failed to mention any effect of the memorandum of agreement on Appendix No. 18 and continued to pay the laundry allowance. Citing certain arbitral authority, the Union mentions that it had the right to rely on the existing established

interpretations concerning the payment of the laundry allowance because of the Carrier's silence about any effect on the longstanding payment of the laundry allowance.

The Union highlights that Presidential Emergency Board No. 229 received presentations after its creation on May 16, 1996 concerning expenses away-from-home and that the carriers sought to retain the existing integrated framework by opposing the Union's attempt to replace the artificial compensation structure at the national and local levels with reimbursements for actual expenses. The Union continues that the Presidential Emergency Board recommended increases in certain allowances and created a new travel allowance without eliminating the existing framework. The Union specifies that the national agreement, executed by the parties on September 26, 1996, adopted the recommendations of the Presidential Emergency Board concerning expenses for meals, lodging, and travel expenses without any hint from the Carrier about a change to Appendix No. 18 or the laundry allowance of $2.00 per week.

The Union adds that the Carrier unilaterally changed the laundry allowance payment arrangement on or about November 25, 1996 as a means to save money, precluded the employees from cleaning the bed linens and towels, and attempted to recoup certain payments that employees had received. After the Union sought a federal injunction to bar the Carrier's action, the Union clarifies that the parties resolved the litigation by agreeing to refer the dispute to the present arbitration

proceeding. The Union reiterates that the Carrier improperly ended the payment of the laundry allowance, that the Union's position should be sustained, and that the Union's requested remedy should be granted.

POSITION OF THE CARRIER

The Carrier submits that the Carrier paid a laundry allowance as an expense to employees who lived away from their homes during the work week and who did their own laundering of bed linens and towels. The Carrier recognizes that it has a responsibility to furnish and maintain bed linens and towels for the employees. The Carrier explains that the Carrier laundered bed linens and towels when the Carrier lodged the employees in camp cars. It is the position of the Carrier that the employees received a laundry allowance of $1.00 per week at the time pursuant to Appendix No. 18.

The Carrier insists that the laundry allowance lacks applicability when the Carrier arranges to lodge the employees in a motel or hotel in which the proprietor provides clean linens and towels each day. As a result, the Carrier reasons that the employees do not need to launder the bed linens and the towels and lack any entitlement to the laundry allowance. The Carrier interprets the Award of Arbitration Board No. 298 and Appendix 18 of the working agreement to be consistent with the Carrier's position. The Carrier stresses that some erroneous laundry allowance payments occurred to certain employees in isolated instances without any consistency. The Carrier views such events

as not creating a mutually acceptable practice.

In the absence of prior objections and in the context of only 18% of the employees seeking the laundry allowance, the Carrier argues that the parties realized that the change in circumstances eliminated the entitlement to a laundry allowance. The Carrier concludes that the lack of any need for the employees to clean their bed linens and towels afforded the Carrier the right to discontinue paying the laundry allowance to employees. The Carrier urges that its position be sustained and that the Union be directed to withdraw all pending claims on this matter.

OPINION

I. Introduction

This case involves language interpretation. In the absence of any provision to the contrary and consistent with the relevant body of arbitral authority, the Union--as the moving party--has the burden to prove its case by a fair preponderance of the credible evidence.

II. The Meaning of the Relevant Documents

A careful review of the record indicates that Appendix No. 18 contains clear, unequivocal, and mandatory language that relieved the Louisville and Nashville Railroad Company from the laundry obligation--which arose pursuant to the Award of Arbitration Board No. 298--and shifted the responsibility to the employees in return for a payment of $1.00 per week to each employee. This unambiguous provision omits any discretion for either party to exercise. The mandatory language selected by the

parties appears in the key clauses "will do their own laundering" and "will be compensated . . . ."

Appendix No. 18 reflects that the Union and the Carrier negotiated reciprocal duties: the employees absorbed the Carrier's responsibility to do the employees' laundering and the Carrier incurred the obligation to pay the amount of $1.00 per week. At the same time the Union relinquished any right to compel the Carrier to do the laundry and the Carrier avoided any obligation to arrange for laundry to be done. This negotiated understanding established an important framework for the parties that perforce met the needs of all concerned at the time in an acceptable manner.

In reaching such an understanding, the parties, who possessed sophisticated skills in the art of negotiation, necessarily made certain compromises and concessions during the bargaining process. The parties continued to adhere to these compromises and concessions, which occurred in the late 1960's, during the succeeding decades.

The Report to the President by Emergency Board No. 229, dated June 23, 1996, recognized the importance of retaining the essence of the Award of Arbitration Board No. 298. The Emergency Board merely amended the established travel allowances by increasing certain existing allowances. In so doing, the Emergency Board did not delete, replace, or restructure the allowances. In addressing the matter, the Emergency Board omitted any reference to the laundry allowance. As a result, the

laundry allowance remained undisturbed by the Report of the Emergency Board.

The Mediation Agreement, dated September 26, 1996, followed the same approach of the Emergency Board by specifically referring to the Award of Arbitration Board No. 298. The Mediation Agreement merely increased certain existing allowances. The Mediation Agreement also omitted any reference to the laundry allowance. As a consequence, the laundry allowance also remained unchanged by the Mediation Agreement.

III. The Application of the Relevant Documents

In reviewing the extensive history submitted by the parties, no factual basis exists in the record to sustain the Carrier's effort to eliminate the obligation to pay the laundry allowance under the present circumstances. The clear and unequivocal provisions indicate that the laundry allowance still remains in full force and effect. Any modification to this structure is a matter for future collective bargaining.

In the context of this determination, no need exists to review the past practices that existed between the parties. Furthermore, this determination conforms to the applicable precedent set forth in the record.

IV. Conclusion

Under these circumstances and after a thorough analysis of the entire record, the Union proved by a fair preponderance of the evidence that the Carrier had violated existing agreements and practices--including Appendix No. 18 of the BMWE-CSXT

(formerly L&N) working agreement and/or the Award of Arbitration Board No. 298--by discontinuing the payment of the $2.00 per week laundry allowance sought in certain employee expense requests by certain maintenance of way employees beginning on or about November 25, 1996. The Award shall so specify. In accordance with the understanding between the parties, the Award shall provide for the stipulated remedy.

Accordingly, the Undersigned, duly designated as the referenced Board and having heard the proofs and allegations of the above-named parties, make the following AWARD:

> The Carrier did violate existing agreements and/or practices--including Appendix No. 18 of the BMWE-CSXT (formerly L&N) working agreement and/or the Award of Arbitration Board No. 298--by discontinuing the payment of the $2.00 per week laundry allowance sought in certain employee expense requests by certain maintenance of way employees beginning on or about November 25, 1996. The remedy shall be the remedy stipulated to by the parties, namely, that the Carrier shall promptly pay all claims pending as the date of this Agreement (February 18, 1997) for the allowance provided in Appendix No. 18 to those maintenance of way employees who are entitled to have their laundry done by the Company in accordance with the provisions of Award of Arbitration Board No. 298.

Robert L. Douglas
Chairman and Neutral Member

Steven V. Powers
Employe Member
Concurring/~~Dissenting~~

J.T. Klimtzak
Carrier Member
[redacted]/Dissenting

DATED: September 5, 1997
STATE of New York)ss:
COUNTY of Nassau

I, Robert L. Douglas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.