BEFORE PUBLIC LAW BOARD NO. 6752

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 1

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed and refused to allow Mr. S. S. Gibson the proper meal allowance expense payment in connection with working away from his headquarters in July and August 2002 (System File MW-02-122/1342043 MPR).

2. As a consequence of the violation referred to in Part (1) above Claimant S. S. Gibson shall now be compensated in the amount of one hundred ninety-one dollars and seventeen cents ($191.17)."

Background:

S. S. Gibson, a Bridge and Building ("B&B") Foreman and Carpenter with over twenty years' seniority, was assigned away from his regularly assigned headquarters point in July and August 2002.[1] From July 30 through August 29, Claimant paid out of pocket for his meals. For his lodging, Claimant elected to use a Carrier-supplied Corporate Lodging Card ("CLC") at a motel which, pursuant to the terms of the CLC, billed the Carrier directly for the room. The Carrier had negotiated special rates with certain national motel chains that accepted CLCs and billed the Carrier directly.

When Claimant submitted his bills to the Carrier for reimbursement, the Carrier paid him $52.00 per day to help defray the actual reasonable cost of his meals and lodging pursuant to

[1] All dates will be in 2002 unless otherwise stated.

Rule 41(b), which provides:

> (b) When employees are unable to return to their headquarters point on any day they will be reimbursed for the actual reasonable cost of meals and lodging away from their headquarters point not in excess of an amount equal to that paid under Award of Arbitration Board No. 298 to help defray expenses for lodging and meals. Such employees will be assigned one person to a room when lodging is provided and is available.

(Car. Ex. B). It is undisputed that the applicable amount pursuant to the Award of Arbitration Board No. 298 was $52.00.

The Claimant, however, asserted that because the Carrier provided his lodgings through the CLC he should have been reimbursed an additional $191.17 pursuant to paragraph 5 of *Interpretations of the Arbitration Board, Arrived at in Conference at the Time the Award was Executed at Washington, D.C. on September 30, 1967*, which provides:

> Under Section II B, if the carrier provides a lodging facility, at an away from headquarter's [sic] point, and an employee is agreeable to using such facility, then the maximum allowance will be $3.00 for meals.

(Org. Ex. A-5, Att. No. 2). It is undisputed that the $3.00 meal rate was increased to $23.00.

By letter dated October 12, the Organization presented a claim on behalf of Claimant for $191.17, which the Carrier denied in a December 6 letter. After the Organization's appeal of the December 6 determination was denied, the parties submitted the dispute to this Board for resolution.

Organization's Position:

The Organization asserts that paragraph 5 of the interpretative memorandum accompanying the Award of Arbitration Board No. 298 makes clear that, because the Carrier through the CLC provided lodgings that Claimant agreed to use, the maximum daily meal allowance was $23.00. The Organization also relies on Interpretation No. 43, which states that a

Carrier may not arbitrarily allocate the expense allowance into a lodging portion and a meal portion unless paragraph 5 of the interpretative memorandum applies, in which case the maximum daily meal allowance is specified.

In response to the Carrier's argument that it did not "provide" lodgings to Claimant, the Organization argues that it did, particularly because the Carrier has directed employees to use the CLC for lodgings while working away from home. According to the Organization, it does not care what price the Carrier has negotiated with motels accepting the CLC. It asserts, however, that when the Carrier provides lodgings through the CLC, it is obligated to pay up to $23.00 daily for meals.

Carrier's Position:

The Carrier contends that Rule 41(b) governs the instant case. Because the Carrier fulfilled its obligations under Rule 41(b), it asserts that the claim should be denied.

In response to the Organization's claim that paragraph 5 of the interpretive memorandum accompanying the Award of Arbitration Board No. 298 requires the Carrier to pay up to $23.00 daily for reasonable meal expenses, it argues that paragraph 5 is inapplicable because it did not "provide" lodgings to Claimant. Rather, according to the Carrier, Claimant elected to use his CLC for lodgings provided by a third party, which is very different from being provided lodgings by the Carrier.

Findings:

Rule 41(b) sets forth the general rule regarding reimbursement of expenses to employees who have been unable to return to their headquarters point:

> (b) When employees are unable to return to their headquarters point on any day they will be reimbursed for the actual reasonable cost of meals and lodging

> away from their headquarters point not in excess of an amount equal to that paid under Award of Arbitration Board No. 298 to help defray expenses for lodging and meals. Such employees will be assigned one person to a room when lodging is provided and is available.

(Car. Ex. B). In apparent compliance with Rule 41(b), the Carrier paid Claimant the maximum daily amount then allowable -- $52.00 -- for each day in question.

The Organization claims, however, that Claimant is entitled to full payment of his lodgings through the CLC, plus $23.00 per day for meals, relying on paragraph 5 of the interpretative memorandum accompanying Award of Arbitration Board No. 298:

> Under Section II B, if the carrier provides a lodging facility, at an away from headquarter's [sic] point, and an employee is agreeable to using such facility, then the maximum allowance will be $3.00 for meals.

(Org. Ex. A-5, Att. No. 2). According to the Organization, because Claimant used his CLC resulting in direct billing to the Carrier, the Carrier necessarily "provided" a lodging facility as those terms are used in paragraph 5. The Board disagrees.

When paragraph 5 is read together with Rule 41(b), it is clear that the word "provide" in paragraph 5 means lodgings that are provided directly by the Carrier, not through a third-party motel. Of prime importance is the fact that when a motel is paid directly by the Carrier through use of the CLC, the cost to the Carrier is clear and can be deducted from the $52.00 amount allowed by Rule 41(b). By contrast, if the Carrier were to provide lodgings owned or leased by the Carrier, it would be very difficult to assign a cost to be deducted from the $52.00. Under those circumstances, the employee would not be reimbursed for lodgings that were provided by the Carrier, but would receive up to a $23.00 reimbursement for meals pursuant to paragraph 5.

In the instant case, however, the cost of the motel was easily ascertainable and was therefore properly deducted from the $52.00 allotment. Thus, both the CLC charge and the

reasonable, actual cost of meals, were subject to the $52.00 reimbursement cap.

Further support for this interpretation of the term "provide" in paragraph 5 is found in Rule 41(b), which makes clear that it is not intended to provide full reimbursement to employees for their expenses. Thus, Rule 41(b) states that the amount of reimbursement is "to help defray expenses for lodging and meals." The Organization's argument, if adopted, would result in full payment of lodgings whenever the CLC was used. This result would yield a windfall to employees, which was not the intent of Rule 41(b).

Moreover, the CLC system works to the employee's benefit. The Carrier presumably negotiates favorable rates, and the employee does not have to burden his own charge card when he uses the CLC. If the rate is not favorable, the employee may elect to seek a better rate elsewhere. Furthermore, contrary to the Organization's claim that the Carrier directed employees to use CLCs whenever possible, the record contains no evidence in support.

In brief summary, the Carrier provided Claimant with a charge card. It did not "provide" lodgings within the meaning of that term in paragraph 5 of the interpretative memorandum accompanying the Award of Arbitration Board No. 298. Accordingly, the claim must be denied.

Award:

The claim is denied.

JOAN PARKER, Neutral Member

CARRIER MEMBER

DATED: 9-29-05

ORGANIZATION MEMBER

DATED: 9-29-05