

PUBLIC LAW BOARD NO. 1844

AWARD NO. 25

CASE NO. 29

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement and the practice thereunder when beginning on August 24, 1976, it failed and refused to reimburse Track Supervisors and Assistant Foreman Truck Drivers the expense incurred for all of their noon day meals while away from their headquarters (Carrier's File 81-3-195).
- (2) Each of the claimants listed on the attachment\* to our letter of claim presentation now be reimbursed the cost of his noon day meal expense incurred away from his headquarters for each day such expenses are incurred subsequent to August 24, 1976."

OPINION OF BOARD:

On August 24, 1976 and subsequent dates the Claimants were employed as track supervisors or assistant foremen - truck drivers, and remained away from their headquarters overnight. There is no dispute about their entitlement to expenses for lodgings or evening meals, or for breakfast and lunch on the second day, after remaining away from headquarters overnight. The claims are for expenses for midday lunches on the first day.

The governing rule is Rule 46 of the schedule agreement effective August 1, 1974, which provides:

"Employees 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 on or off their assigned territory. This Rule not to apply to employees customarily carrying mid-day lunches and not being held away from their assigned outfit cars or headquarters two hours beyond normal quitting time."

The Organization contends that for 15 years, from 1961 to 1976, track supervisors were paid for their midday lunches on the first day while away from their regular headquarters under the provisions of a Memorandum of Agreement dated May 26, 1961, which provided:

"Track supervisors will be paid actual expenses incurred for meals and lodging while away from headquarters in connection with their work. When required by the company to use their private automobiles in the performance of their duties they will be allowed seven cents per mile for use thereof."

The Carrier states that four of the Claimant track supervisors worked under the former Chicago Great Western Schedule Agreement, rather than the Memorandum of Agreement of May 26, 1961, until the schedule agreements were consolidated effective August 1, 1974, and did not receive expenses for midday lunches on the first day from 1961 until 1974. The Carrier also points out that the three Claimant assistant foremen-truck drivers were never covered by the 1961 Memorandum of Agreement. The carrier does not deny that claims such as these were paid from 1974 to 1976, although it denies that it was a universal practice. However, the Carrier contends that the 1961 Memorandum of Agreement was superseded by Rule 46 of the 1974 schedule agreement, and that the practice since August 1, 1974, did not change the governing rule.

As held in Award No. 16 of this Board, our primary obligation is to determine the intent and meaning of the governing rule. This is especially true where the custom, tradition and practice relied on by the Organization was not universal, but was followed on only four of seven divisions, sometimes a fifth.

The Memorandum of Agreement of May 26, 1961, in effect created an exception to the general rule, but it was not continued in effect after August 1, 1974. Accordingly, it lends no support to these claims.

The key issue in this case is the meaning of the phrase, "employees customarily carrying midday lunches." The Carrier states that the second sentence of Rule 46 evidences an intent that an employ<sup>er</sup> who has the opportunity to carry his lunch from home in the morning, even if he chooses to buy his lunch, should not be reimbursed for cost of such meals. This appears to be a reasonable interpretation, and with regard to midday lunches, that has been the practical interpretation of Rule 46 for all employees except track supervisors on several divisions.

Based upon all the foregoing, the claims must be denied.

FINDINGS:

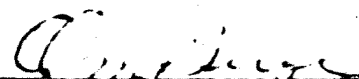
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. That the Carrier and Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claims denied.

  
Dana F. Fischen, Chairman

  
O. M. Berge, Employee Member

  
R. W. Schmege, Carrier Member

Dated April 11, 1978