

PUBLIC LAW BOARD NO. 2960

AWARD NO. 63
CASE NO. 51

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to allow B&B Department employees W. J. Kress, D. W. Clark, D. J. Weigelt, L. E. Ewoldt, L. D. Peters and P. J. Gantnier, for actual expenses incurred while they were required by the Carrier to be away from their regular assigned outfits from August 24, 1981 through September 23, 1981. (Organization File 4T - 2823; Carrier File 81-3-249)

(2) The Claimants shall be reimbursed for actual expenses incurred from August 24, 1981 through September 23, 1981, while working on the Boone, Iowa high bridge.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

This dispute involves a question as to whether Rule 46 or Rule 47 applies to the Claimants. The Carrier argues Rule 47 applies and the

Organization argues that Rule 46 applies. Rules 46 and 47 are quoted below:

"Rule 47 - Camp Cars

"The 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 Company, the camp cars or other lodging furnished shall include bed, mattress, pillow, soap, and washing and toilet facilities.

"(2) Lodging facilities furnished by the Company shall be adequate for the purpose and maintained in a clean, healthy and sanitary condition.

"(3) If lodging is not furnished by the Company, the employee shall be reimbursed for the actual reasonable expense thereof not in excess of \$6.50 per day.

"An employee not furnished lodging by the Company who owns a trailer and/or pick-up camper may request authorization from the Assistant Division Manager - Engineering to provide his own lodging in such vehicle and, if so authorized, will be allowed \$6.50 lodging expense per day for each day he performs service. Authorization will be granted in all instances where the Assistant Division Manager - Engineering is convinced the request is legitimate. Such authorization must be in writing and made part of the record. Authorization granted may be revoked in writing for cause.

"(4) Where the lodging furnished by the Company does not include bed linen and blanket, employees will be allowed 30¢ per day for each work day their names appear on the payroll for service performed.

"(b) Meals

"(1) If the Company provides cooking and eating facilities and pays the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$2.00 per day.

"(2) If the Company provides cooking and eating facilities but does not furnish and pay the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$3.00 per day.

"(3) If the employees are required to obtain their meals in restaurants or commissaries, each employee shall be paid a meal allowance of \$5.00 per day.

"(4) The foregoing per diem meal allowance shall be paid for each day of the calendar week, including rest days and holidays, except that it shall not be payable for work days on which the employee is voluntarily absent from service, and it shall not be payable for rest days if the employee is voluntarily absent from service when work was available for him on the work day preceding or the work day following said rest days or holiday.

"(c) Travel from one work point to another

"(1) Time spent in traveling from one work point to another outside of regularly assigned hours or on a rest day or holiday shall be paid for at the straight time rate.

"(2) An employee who is not furnished means of transportation by the Company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such other transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the Company he shall be reimbursed for such use of his automobile at the prevailing mileage rate. If an employee's work point is changed during his absence from the work point on a rest day or holiday this paragraph shall apply to any mileage he is required to travel to the new work point in excess of that required to return to the former work point.

"(d) The Company will furnish an adequate supply of water suitable for domestic use to employees living in its buildings, camps and outfit cars. Where it must be transported and stored, the receptacles shall be adapted to the purpose. At points where ice is furnished employees of other departments, the same consideration will be given employees covered by this Agreement during such times of the year as deemed necessary."

"Rule 46 - Meals and Lodging

"Employees will be reimbursed for actual necessary expenses for the cost of meals and lodging incurred while away from their regular outfits or regular headquarters by direction of management as follows:

"Employees held away from their outfit or headquarters two hours beyond normal quitting time will be reimbursed for actual necessary expense incurred for the evening meal.

"Employees who begin and end their daily tour of duty at their regular outfit or headquarters will not be reimbursed for the cost of the noon day meal.

"Employees who begin their tour of duty at their regular outfit or headquarters and who are required to remain away therefrom one or more days (nights) will be reimbursed for the cost of the evening meal on the first day and for all meals on succeeding days except the evening meal on the day they return provided the return is within two hours of normal quitting time."

A certain degree of ambiguity exists between the two rules. This is due to the fact that they both make reference to "camp cars" and "outfit cars," which are synonymous terms. In spite of the ambiguity, it is apparent the two rules were meant to apply to two different groups of employees, both of whom may at least on occasion be assigned camp cars or outfit cars. After close analysis, the distinguishing feature between the two rules relates to the more specific qualifying proviso in the introductory sentence of Rule 47. Rule 46 contains no such specific language. The introductory sentence to Rule 47 indicates it applies to employees who regularly are required, by the nature of their work, to live away from home throughout their work week in camp cars, etc. It also provides expense arrangements if camp cars are not assigned, therefore it is not necessary that the camp car always follow an employee so situated for Rule 47 to apply.

Thus, in contrast Rule 46 apparently, but with less clarity, provides expenses to those employees who even though they may be assigned outfits, aren't regularly required to live in camp cars, etc. and aren't regularly required to be away from home throughout the work week.

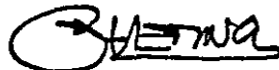
In any event, to prevail, the Organization would first and initially have to establish that the Employees were not "...in a type of service, the

nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels..."

This record is void of any facts which would allow a definitive finding that the Employees in question do not fit the criteria of Rule 47. Therefore, the Organization did not sustain their burden to show that Rule 46 is controlling. Accordingly, the Claim is dismissed for lack of proof.

AWARD:

The Claim is dismissed.



Gil Vernon, Chairman


H. G. Harper, Employee Member
J. J. Crawford, Carrier Member

Dated: Sept 6, 1951