

PUBLIC LAW BOARD NO. 3888

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

MAINE CENTRAL RAILROAD COMPANY--PORTLAND
TERMINAL COMPANY

Case No. 4
Award No. 4

STATEMENT OF CLAIM

Claim of the Brotherhood (MW-85-9) that:

(a) The Carrier has violated the current Scheduled Agreement, particularly Rules 5, 29, 29(a), 32, 35 and 45, when on June 28, 1984, and thereafter until September 7, 1984, excluding the period from July 19, 1984, until July 29, 1984, the Carrier failed to provide away-from-home expenses, as described in the Scheduled Agreement, for the Tie Production Crew T-200, which was initially headquartered at Oakland, Maine, and subsequently moved numerous times during the period of this claim.

(b) Each of the following Claimants:

D. A. LaPointe, Foreman
Tim Joler, Assistant Foreman
H. R. Hambrick, Machine Operator
G. E. Bouchard, Machine Operator
F. M. Tingley, Machine Operator
F. A. Wood, Machine Operator
R. M. Dunbar, Machine Operator
R. R. Hartsgrove, Machine Oper.
M. O. Fairfield, Machine Oper.
G. C. Desveaux, Machine Oper.
T. J. Fairfield, Machine Oper.
E. A. Douin, Machine Operator

D. C. Huard, Machine Operator
M. B. Hutchinson, Machine Operator
J. P. Fairfield, Machine Operator
D. W. Knowles, Machine Operator
E. F. Soucy, Machine Operator
P. J. Lachance, Trackman
G. N. Patterson, Trackman
J. W. Gurney, Trackman
R. M. Merrithew, Trackman
J. R. Collins, Trackman
P. L. Lessard, Trackman

shall be compensated for away-from-home expenses totaling \$21.75 each day for the period of June 28, 1984, through September 7, 1984, excluding the period of July 19, 1984, through July 28, 1984, including the actual time and mileage necessary to transport themselves from one location to each of the newly assigned locations. Time shall be computed in accordance with the agreed upon basis at two minutes per mile.

OPINION OF THE BOARD

This claim arises out of the same set of circumstances discussed in Award No. 3 of this Public Law Board. The Organization seeks away-from-home expenses for members of a tie gang (whom it has now been determined were working spare) headquartered at Oakland. The central issue in this dispute is whether crews working spare are entitled to away-from-home expenses. (The right to cancel an advertisement, as well as the Organization's objection to the manner in which Carrier responded to the initial claim were disposed of in Award No. 2.)

In his response to the claim, Engineer of Track D. C. Eldridge pointed out that "In an agreement between Mr. Daniel A. LaPointe and myself, all employees who traveled from Oakland to any other point where the tie crew worked were allowed [only] mileage to the job and return to Oakland." The Organization objected to the statement, contending that if in fact there was such an agreement, those making it were without authority to do so. The Organization argued that it would have been in violation of the current Schedule Agreement. If, upon a review of the Scheduled Agreement, it becomes apparent that there is provision for away-from-home expenses for employees working spare, then the Organization is correct in maintaining that that provision takes precedent over any oral agreement. (In a response

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to Carrier's denial of the claim, General Chairman John J. Lattanzio contended that "The provisions of the agreement and away-from-home expenses pertain to all employees no matter what the Carrier considers their employment status when employed in the nature of work which would not allow them to return to their designated headquarters.) There are several documents that must be considered to determine if that in fact is the case.

The first is Award No. 298, dated September 1967, certain provisions of which (applicable to Maintenance of Way employees) were incorporated by Carrier in the Agreement. This Award, in Section II, clearly deals with "employees filling relief assignments or performing extra or temporary service," as well as regular employees. The pertinent language is as follows:

- II. Employees (other than those referred to in Section I above and other than dining car employees) who are required in the course of their employment to be away from their headquarters point as designated by the carrier, including employees filling relief assignments or performing extra or temporary service, shall be compensated as follows:

[Employees referred to in Section I are those "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...", etc.]

- A. The carrier shall designate a headquarters point for each regular position and each regular assigned relief position. For employees, other than those serving in regular positions or in regular assigned relief positions, the carrier shall designate a headquarters point for each employee. No designated headquarters point may be changed more frequently than once each 60 days and only after at least 15 days' written notice to the employee affected.

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- B. When employees are unable to return to their headquarters point on any day they shall be reimbursed for the actual reasonable cost of meals and lodging away from their headquarters point not in excess of \$7.00 per day.
- C. An employee in such service shall be furnished with free transportation by the railroad company in traveling from his headquarters point to another point, and return, or from one point to another. If such transportation is not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines, or the cost of other public transportation used in making the trip; or if he has an automobile which he is willing to use and the carrier authorizes him to use said automobile, he will be paid an allowance of nine cents for each mile in traveling from his headquarters point to the work point, and return, or from one work point to another.
- D. If the time consumed in actual travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one hour, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time enroute, necessary to return to his headquarters point or to the next work location exceeds one hour, then the excess over one hour in each case shall be paid for as working time at the straight time rate of the job to which traveled. When employees are traveling by private automobile time shall be computed at the rate of two minutes per mile traveled.

Other relevant documents are the Schedule Agreement and the Memorandum of Agreement Maine Central Railroad Company, Portland Terminal Company and the BMWE, dated September 16, 1983. Rule 32 of the Schedule Agreement requires Carrier to designate a headquarters point:

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Management shall designate a headquarters point for each regular position and each regular assigned relief position. For employees, other than those serving in regular positions or in regular assigned relief positions, management shall designate a headquarters point for each employee. No designated headquarters point may be changed more frequently than once each 60 days and only after at least 15 days written notice.

Rule 35 speaks of benefits provided for employees who are required to live away from home during the week:

Management 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:

Rule 5 (i) of the Memorandum, on the establishment of spare work lists, reads as follows:

The Carrier shall establish two (2) spare work lists for each division. The spare work list territories will be of approximately the same size. All furloughed roster-rated Trackmen who make written request within (10) days from being furloughed may sign up for spare work and shall have the option of signing up for either or both Division spare work lists on the division on which they hold seniority.

In correspondence on the property and on its submission, Carrier made several arguments in relation to the headquarters it establishes and to its obligation to pay away-from-home expenses:

(1)...the selection of spare work list by laid off employees, in effect, establishes a headquarters point for each individual. Thus, management's obligation to assign a headquarters point for each man is negated by the man's decision to go on a specific spare work board or boards.

(2) The only time that lodging is furnished to a spare man is when the vacancy he is filling is in a crew headquartered in outfit cars. In all other cases, no lodging is available or furnished. The nature of their service does not require them to be away from home during the week. If they are away from home during the week, that is their option. By signing up on the spare work list, employees are indicating that they are willing to take any work and meals and lodging are not a prerequisite.

(3) In addition, employees in a furloughed status elected a spare work list location within each division. This selection established a region in which to perform spare work and to be called for same. Employees so called to work spare within the elected territory are not required to "live away from home" as contemplated in Rule 35. Since the spare employees could elect where they worked, outfit cars or daily away-from-home expenses were not required. They were not "away-from-home" and cannot demand such expenses. By their willingness to sign up to work in a specific territory these away-from-home expenses do not apply.

This Board does not agree with Carrier's statement that "Management's obligation to assign a headquarters point for each man [working spare] is negated by the man's decision to go on a specific spare work board or boards." The fact that Carrier gives these employees the option of selecting one of two headquarters does not relieve it of the obligation to establish a headquarters.

Carrier's statement that "the only time that lodging is furnished to a spare man is when the vacancy he is filling is in a crew headquartered in outfit cars" is not supported by Award No. 298. That Award provides that "When employees [including employees filling relief assignments or performing extra or temporary service -- and not

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living away from home in camp cars, etc.] are unable to return to their headquarters point on any day they shall be reimbursed for the actual reasonable cost of meals and lodging away from their headquarters point...." Carrier at no time indicated that this requirement was ever abrogated. From this language, we cannot conclude that "By signing up on the spare work list, employees are indicating that they are willing to take any work and meals and lodging are not a prerequisite." Nor can we assume that "By their willingness to sign up to work in a specific territory these away-from-home expenses do not apply." For employees to give up such a basic contractual right by electing a specific territory, it would be necessary for there to be an express agreement to that effect. We find no such agreement.

Thus, we must conclude that the Organization's claim in this instance has merit and we so award:

AWARD

Claim sustained. Claim satisfied with the payment of \$21.75 per day plus 20 minutes per day per Claimant.


C. H. Gold, Neutral Chairman


B. L. Peters, Carrier Member


W. E. LaRue, Employee Member

7/30/87
Date of Adoption