

AWARD NO. 100

CASE NO. 130

SSW File 93-841-C-13

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES) Brotherhood of Maintenance of Way Employees
TO)
DISPUTE) St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement dated July 1, 1967, especially, Rule 7-17, when it cut the expenses of welders and welder helpers from actual necessary expenses to \$2.15 a day as provided for certain classes of employees in the August 8, 1969 Agreement, which placed into effect Section 2, in conjunction with Section 1 of the Agreement dated March 7, 1969, relating to the application of Section 1 of the Award of Arbitration Board No. 298, NMB Case A-7948.

2. The Carrier shall now reimburse Alfonso Alfaro for the difference between actual necessary expenses in the amount of \$93.46 and the \$2.15 a day beginning September 2, 1969, through September 30, 1969.

3. The Carrier shall be required to pay, in addition to the money amounts claimed herein, an additional amount of 10% per annum compounded annually on the anniversary date of the claim.

FINDINGS:

The question to be decided in this dispute is whether Welders and Welder Helpers assigned to mobile trailers are entitled to actual necessary meal expenses rather than \$2.15 per day.

A brief history of how Welders and Welder Helpers have been reimbursed for meals on this property is helpful: From 1927 to 1957, it appears that Welders and Welder Helpers were allowed actual expenses for meals and lodging when away from their home stations. When outfit cars were furnished, only reimbursement for meals was made. Such allowances were made under the provisions of the then Rule 7-14 (now Rule 7-17) stating in pertinent part: "Actual necessary expenses will be allowed when away from home stations." The rule was subsequently interpreted to exclude the payment of meal expenses to certain designated positions. Award No. 2 and No. 31 of this Board found that Welders and Welder Helpers positions did not come under the Interpretation of Rule 7-14 and were thus entitled to be reimbursed for meal expenses.

The disputes that resulted in Award No. 2 and No. 31 mentioned above came about in 1957 when Carrier replaced the old outfit cars with mobile camp trailers that were fully equipped with cooking facilities

and appliances. Carrier took the position that under the circumstances it was not required to reimburse a Welder and his Helper for actual meal expense or groceries. The Board rejected Carrier's position and sustained the claims for the reasons outlined above.

By National Agreement dated July 19, 1967, the nation's Carriers and various Organizations, including the Brotherhood of Maintenance of Way Employees, agreed to submit certain questions to arbitration with respect to travel time and expenses for employees required to work away from their "home stations". As a result of this Agreement, an arbitration panel was formed and commenced hearings.

The Award of Arbitration Board No. 298 was issued on September 30, 1967. The pertinent provisions of the Award relating to this dispute are as follows:

SECTION 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:

* * * * *

2. If the railroad 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 \$2.00 per day.

* * * * *

SECTION II. Employees (other than those referred to in Section I above) who are required in the course of their employment to be away from their headquarters point as designated by the Carrier as provided in Paragraph A hereof, including employees filling relief assignment or performing extra or temporary service, shall be compensated as follows:

- 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.

- B. When employees filling relief assignments and extra employees performing extra or temporary service 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.

* * * * *

- E. Regularly assigned employees covered by this section, other than those employees filling relief assignments and extra employees performing extra or temporary service, will be reimbursed for actual necessary expenses and allowed time for traveling or waiting under appropriate rules of current schedule agreement.

Section V of Arbitration Board Award No. 298 allowed the Organizations the option of electing to accept any or all of the provisions in Sections I, II and III or to continue in effect any or all of the provisions of the existing agreement.

The record indicates that the Organization elected to retain the actual expense benefits under Rule 7-17 for Welders and Welder Helpers when they were away from their home stations, irrespective of whether or not Carrier furnished them with mobile camp trailers. Carrier took the position that if such Welders or Welder Helpers were furnished with mobile camp trailers, they came under the provisions of Section I and were only entitled to \$2.15 a day. The dispute was submitted to Arbitration Board No. 298 for interpretation, and subsequently Interpretation No. 48 was rendered as follows:

"QUESTION: Does Section I-B of the Award supersede Agreement Rule 7-17, under which welders and welder helpers are entitled to be reimbursed for actual necessary expenses when they are away from their assigned headquarters?

ANSWER: No. The Organization elected to preserve existing Rule 7-17."

As a result of the Interpretation Carrier, in July, 1969, reimbursed the Welders and Welder Helpers the difference between actual expenses and \$2.15 a day.

On August 8, 1969, a letter agreement consistent with the provisions of the Award of Arbitration Board No. 298 was signed by the parties. By letter dated the same day Carrier informed the Organization, in pertinent part:

"Effective on and after September 1, 1969, welders and welder helpers who are regularly required throughout their work week to live away from home as provided in Section I of the Letter Agreement dated today will not have designated home stations and will be covered by the provisions of such Section I because they are being notified of change in headquarters to house trailers assigned their gangs effective September 1, 1969."

As a result of Carrier's action, these claims are now before this Board.

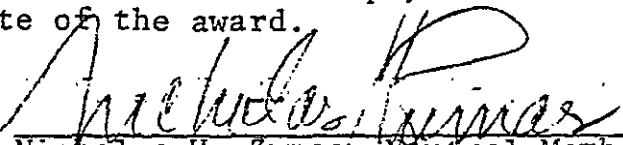
Carrier takes the position that Rule 7-17 is not now applicable because such affected employees are not away from their "home stations" since the mobile camp trailer is their home station. Carrier further asserts that Interpretation No. 48 has no application to Welders and Welder Helpers "with assigned headquarters in mobile trailers."

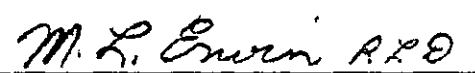
An analysis of this record compels the conclusion that Carrier has unilaterally attempted to avoid the consequences of an election by the Organization to retain the benefits of Rule 7-17 as they apply to Welders and Welder Helpers. Such attempts clearly subvert the practice on this property, the effect of prior awards on this property, and the intent and application of Award of Arbitration Board No. 298; they shall not be allowed. Third Division Award No. 18496, relied upon by Carrier, is distinguishable on the facts.

There is no basis or justification for the payment of interest, and that portion of the claim shall be denied.

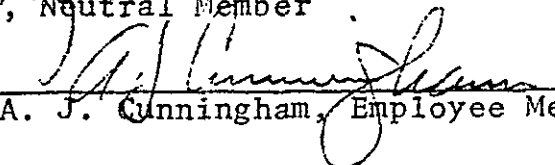
AWARD: A. Sections 1 and 2 of the claim are sustained.
B. Section 3 of the claim is denied.

ORDER: Carrier is directed to make payment within thirty (30) days of the date of the award.


Nicholas H. Zumas, Neutral Member


M. L. Erwin, Carrier Member

DISSENTING


A. J. Cunningham, Employee Member

Tyler, Texas
October 30, 1975