

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE.—“Claim of E. E. Clady, F. E. Klose, W. V. Feeney, H. B. Marker, J. H. Robinson, E. C. Howell, and R. C. Weller, Signal Department Employees assigned to Chicago Division gang, for pay to cover meals and lodging for the actual working days from August 20, 1934, to October 8, 1934, inclusive, while working away from their headquarters at McCools, Ind.”

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As result of a deadlock, Wm. H. Spencer was called in as Referee to sit with this Division.

The following facts were jointly certified by the parties:

“A signal gang was established under Bulletin No. 8, issued on June 23, 1934, as follows:

“Re. Signal Department Bulletin No. 8.

“CHICAGO DIVISION, GARRETT, INDIANA, June 23, 1934.

“All Signal Maintainers:

“Bids will be received in this office up to and including July 3rd, 1934, on the following positions: 1 Signal Foreman, 2 Signalmen, 2 Assistant Signalmen, 2 Signal Helpers.

“Headquarters at McCools, Ind. To do signal work between Babcock and Rock Island Junction.

“Rates in accordance with Signalmen's Agreement.

“P. H. CARROLL, Signal Supervisor.

“Cy—Mr. A. H. Woerner, Mr. S. H. Jewett, Mr. S. A. Jordan, Mr. C. A. Duvall, Mr. F. M. Dunn.’

“The gang worked out of this point until August 20, 1934, when the headquarters were changed by a notice from P. H. Carroll, Signal Supervisor, to Signal Foreman E. E. Clady, as follows:

“Changing headquarters Signal Gang.

“GARRETT, August 17, 1934.

“Mr. E. E. CLADY,

“Signal Foreman.

“Effective Monday, August 20th, your headquarters and your gang will be changed from McCool, Ind., to Millers, Ind. Page 20, Rule 45, will govern this change.

“P. H. CARROLL, Signal Supervisor.

“Cy—A. H. Woerner.

“F. M. Dunn.’

“The gang worked out of Millers until October 8, 1934, when Bulletin No. 13, dated September 28, 1934, was issued establishing a new gang with headquarters at Indiana Harbor, Ind., as follows:

"Re. Signal Department Bulletin No. 18.

"CHICAGO DIVISION, GARRETT, INDIANA, Sept. 28, 1934.

"*All Signal Maintainers:*

"Bids will be received in this office up to and including October 8th, 1934, on the following positions: 1 Signal Foreman, 2 Signalmen, 2 Assistant Signalmen, 2 Signal Helpers.

"Headquarters at Indiana Harbor, Ind. To do signal work between Babcock and Rock Island Junction.

"Rates in accordance with Signalmen's Agreement.

"P. H. CARROLL, *Signal Supervisor.*

"Copies to A/c."

"Boarding cars were not provided for the men in this gang."

The employees submitted Rule 17 of the current agreement, in support of their claim, as follows:

"Hourly rated employees sent from home station to perform work and who do not return to home station daily will be paid for traveling or waiting in accordance with Rule 18 of this Article. All hours worked will be paid for in accordance with Rules 14 and 15 of this article. Necessary expenses will be allowed at the point to which sent if meals and lodging are not provided by the railroad or boarding cars to which employees are assigned are not available."

CONCLUSIONS OF THE DIVISION.—The facts of this controversy are not in dispute. The only issue before the Division is whether there is any rule—or rules—in the Agreement between the parties upon which the claim of the petitioner can be rested.

(1) Do the rules of the Agreement require the carrier to furnish camp cars?

There is nothing in the Agreement which expressly requires the carrier to maintain camp cars for signal construction crews. This is an operating practice which, so far as the express terms of the Agreement are concerned, is left to the discretion of the management. There are, of course, several rules in the Agreement (the petitioner cites Rules 8, 10, 17, 18, 22, 28, 62, and 65) which govern the use of camp cars if the carrier elects to resort to them. Rule 62, by way of illustration, provides that "it will be the policy to maintain camp cars in good and sanitary condition and to furnish bathing facilities when practicable and desired by the employees and to provide sufficient means of ventilation and air space." This rule, in the opinion of the Referee, does not impose upon the carrier an unqualified obligation to provide camp cars; it merely provides that the carrier, when it uses camp cars, shall do so under the conditions, among others, therein set forth. This is equally true of the other rules relied upon by the petitioner.

(2) Does the arbitration award of 1932 require the carrier to furnish camp cars?

For many years prior to March 1921, the carrier had furnished camp cars for the use of signal construction crews and had provided the cars with certain basic equipment. Although the employees had been required to bear the cost of their food, the carrier had paid the wages of camp car cooks. In March 1921, the respondent discontinued the practice, and required the men to assume the obligation in question.

The Brotherhood of Railroad Signalmen immediately protested this action of the carrier. After many years of unfruitful negotiations, the dispute was submitted to a committee of arbitration set up by the United States Board of Mediation under authority of the Railway Labor Act of 1926. The question submitted was thus formulated:

"Shall the management furnish and pay the wages of cooks for signal department employees assigned to camp cars?"

On November 17, 1932, the committee returned an affirmative answer to the question.

The petitioner strongly urged that this award recognized an obligation of the carrier to furnish camp cars. It must be remembered, however, that the issue submitted was not whether the carrier should furnish camp cars but whether it should "furnish and pay the wages of cooks for signal department employees assigned to camp cars."

The petitioner directed the Division's attention to the statement of Mr. Vermilion, representing the carrier during the arbitration hearing, that "Rule 62 obligates the management to provide camp cars and maintain them in good and sanitary condition." This, of course, is in the nature of an admission on the part of the carrier. It is to be remembered, however, that the statement was not pertinent to the issue under consideration at the time.

The Division concludes that the arbitration award of 1932 neither expressly nor by implication requires the carrier to furnish camp cars under any given set of circumstances.

(3) Do the Rules of the Agreement require the carrier to make an allowance for meals and lodging in the circumstances in which it had in the past furnished camp cars?

Rule 17, principally relied upon by the petitioner in support of its position, does provide that in certain circumstances the carrier, if it does not furnish meals and lodging or make boarding cars available, will make an allowance for the necessary expenses of the employees "at the point to which sent." The circumstances under which this obligation of the carrier arises are when "hourly rated employees" are sent "from home station to perform work" and "do not return to home station daily."

On behalf of the employees it was contended that the carrier, having by Bulletin No. 8 of June 23, 1934, established the home station of the gang in question at McCools, Indiana, could only change it to Millers by rebulletining all positions on the gang as new positions; that, having failed to do this, the home station of the crew remained at McCools; that in these circumstances they were sent from their home station to perform work and did not return to the home station daily; and that, therefore, the employees involved in this dispute were entitled to an allowance for meals and lodging in accord with the provisions of Rule 17.

In support of this contention, the petitioner cited Rule 49 and the second paragraph of Rule 50. The former rule provides that "new positions and vacancies will be bulletined on the seniority district on which they occur" under the conditions therein set forth. The second paragraph of Rule 50 provides that the bulletin shall state, among other things, the headquarters of the positions bulletined.

The phraseology of Rule 49 is not, in the opinion of the Referee, susceptible of the construction contended for. The Referee can find no basis for assuming that in the circumstances of this dispute the change of headquarters converted all the positions on the gang into new positions which the carrier was required to rebulletin under the provisions of Rules 49 and 50. The task for which the gang was organized was a single piece of work; and the positions throughout the accomplishment of the task were the same positions.

It is not denied that the carrier's discontinuance of the operating practice in question may in the future cause inconvenience and extra expense to some employees. It may very well be, as urged by the petitioner, that there is a moral obligation upon the carrier to take appropriate steps in the protection of its employees against such inconvenience and expense. These considerations, however, in the absence of a rule or rules which require the carrier either to furnish camp cars or to make necessary allowance of expenses for meals and lodging, should be addressed to the carrier for a revision of the rules which will adequately protect employees in situations comparable to that in the present dispute.

AWARD

The claim is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 24th day of January 1936.