

Award No. 1390
Docket No. MW-1417

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim that the Carrier is obligated to equip regular outfit cars to which Mr. T. Zweifel, Traveling Carpenter, Los Angeles Division, is assigned, with cook stove, free of charge, under the provisions of Rule 65 of current Agreement, effective September 1st, 1926."

EMPLOYES' STATEMENT OF FACTS: "On December 21, 1938, Mr. T. Zweifel was an assigned Traveling Carpenter, on the Los Angeles Division of the Southern Pacific Company, and was assigned regular outfit cars.

"On or about that date Mr. Zweifel received notice that he should deduct from his own and also from any other person assigned to his outfit cars the sum of 25¢ each semi-monthly in favor of the Threlkeld Commissary Company. Said deduction was to be rental for a small cook stove installed in one of the outfit cars.

"Mr. Zweifel objected to payment of rent and the Organization contended the Carrier is obligated to furnish such stoves (heating and/or cooking), as are needed, without charge to the employees, relying on Rule 65 of the current Agreement, effective September 1st, 1926.

"The Carrier contended that cook stoves furnished in outfit cars are the property of Threlkeld Commissary Company and therefore of no concern to the Carrier.

"Rule 65 of the current Agreement reads in part as follows:

"It shall be the duty of the foreman to see that the cars are kept clean. Regular outfit cars to be equipped by the Company with steel bunks with springs, stoves and lamps." (Underscoring ours.)

POSITION OF EMPLOYES: "This is a flagrant violation of a rule which can have but one interpretation. Any argument in support of the employees' contention would be superfluous. The rule supports itself. However, that the Board may have a clear understanding of the situation and the lengths to which the Carrier will go in violation of the Agreement, we will give a brief summary of the conditions leading up to this claim.

"In the performance of Maintenance of Way work it was common practice at the time the Agreement was negotiated and is common practice today, for the Carrier to meet the requirements of its service through the assignment of employees to separate and distinct types of outfits:

- (1) Outfits where large gangs of men are assigned, in which boarding facilities are provided through a commissary company and a dining car is provided for the serving of meals.

the alleged claim is entirely without merit and Carrier requests that it be denied in all particulars."

OPINION OF BOARD: The claimant is regularly using an outfit car. Rule 65 requires it to be maintained by the management "in good and sanitary condition" and that it be equipped with a "stove." The facts make it plain, beyond possibility of reasonable contradiction, that for this man a cook stove is reasonably required. The rule does not say whether heating or cooking stove shall be furnished. The interpretation is inescapable that the one or the other kind of stove will be furnished as reasonable need may dictate. This employe is reasonably in need of a cooking stove. His outfit car should be supplied with one. (The Referee confesses amazement that so much fuss has been made over so trivial a matter, particularly where, rule or no rule, the justice of the claim is so plain.)

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That in the respect indicated there has been a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.