

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Pennsylvania System Committee, Brotherhood of Railroad Signalmen of America, that Telegraph and Signal Maintainers at Springdale, Pa., and Natrona Pa., Conemaugh Division, Pennsylvania Railroad, be paid one hour's pay, at time and one-half rate, for each day starting from May 26, 1947 until headquarters are provided for them in accordance with Article 8, Section 10, of the Telegraph and Signal Department Agreement.

EMPLOYES' STATEMENT OF FACTS: Springdale, Pa., and Natrona, Pa., Conemaugh Division, have been designated as headquarters for the Telegraph and Signal Maintainers. R. R. Rickley and P. F. Connelly were incumbents of these positions at the time claim was first made.

No headquarters are provided at these points in accordance with Article 8, Section 10, of the agreement between the Carrier and the Telegraph and Signal Department employees.

The claimants have had to use their own private automobiles to carry tools and clothing required on the job because of the absence of lockers, washing facilities, and a suitable and safe place to store tools. They have also had to make out the necessary reports of their positions at their own homes because of the lack of proper facilities.

A claim was made for one hour's pay, at time and one-half rate, for each day starting from May 26, 1947 until headquarters are provided for them in accordance with Article 8, Section 10, of the Telegraph and Signal Agreement.

There is an agreement between the parties involved in this dispute bearing effective date of June 1, 1943. We understand there is a copy of this agreement on file with the Board, and request is made that it be made a part of the record in this dispute.

This claim has been handled in the usual manner on the property without reaching a satisfactory settlement.

POSITION OF EMPLOYES: The Brotherhood contends that the Carrier has not carried out the provisions of the agreement, in failing to provide headquarters.

Article 8, Section 10, of the agreement sets out the requirements for facilities which shall be provided for all employees at their designated headquarters.

"* * * This Board has no more right to destroy agreements than it has to create them. * * *"

Other Awards of your Honorable Board to the same effect are Awards Nos. 1248, 1589, 2202, 2491, 2612, 3407, 4259, 4304 and 4661.

The Carrier again repeats that there is absolutely no basis under the applicable Agreement to support payment of the compensation claimed here, and submits that your Honorable Board should deny the claim in this case.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement, the Claimants are not entitled to the additional compensation which they claim by reason of the facilities at their headquarters failing to fully conform to the requirements of Article 8, Section 10.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood makes this claim in behalf of the Telegraph and Signal Maintainers at Springdale and Natrona, Pennsylvania, for one hour's pay at time and one-half rate for every day since May 26, 1947, until proper headquarters are furnished. The basis of the claim is that Carrier has failed to provide headquarters for these employees in accordance with the rules of their Agreement, namely, Article 8, Section 10.

Article 8, Section 10 of the parties' effective Agreement provides as follows:

"Headquarters shall be provided for all employees and shall be kept in good and sanitary condition. They shall be properly heated and lighted and sufficient air space provided. Drinking water and water suitable for domestic use shall be furnished. They shall be adequately furnished with chairs, desks and lockers, and toilets shall be accessible."

As a result of Carrier's failure the Committee contends the incumbents of these positions were required to use their own automobiles to carry tools, materials and clothing to and from their homes to their jobs and to make out all necessary reports and records in their homes and keep up their corre-

spondence from there. In other words, it required them to make their homes the headquarters for their jobs. That consequently, under Article 2, Section 8 (b), they are entitled to be paid for time so consumed.

The Maintainer T. & S. at Natrona was assigned headquarters at the station located there. Admittedly the headquarter facilities there did not conform to the requirements of Article 8, Section 10 of the parties' Agreement effective June 1, 1943 until sometime in December 1947.

The claim here made as to Springdale is clearly intended to relate to the section for which it is headquarters. Prior to October 21, 1947 Cheswick was the headquarters for this same section but commencing October 21, 1947 Springdale became headquarters. The territory involved is the same. It is from westward home signal at U.Y. to westward home signal at R.A., inclusive.

Until the change of headquarters on this section from Cheswick to Springdale, as of October 21, 1947, the Maintainer T. & S. of this section was assigned headquarters at the Cheswick Station. Admittedly the facilities of the headquarters at the station in Cheswick did not comply with the requirements of Article 8, Section 10 of the parties' Agreement effective June 1, 1943. At the time of the change the headquarters at Cheswick was abolished.

This Division has disposed of the issue here involved by its Award 5186 involving a like situation on the same Carrier and under the same Agreement provision. Therein it was stated: "* * * it (Carrier) breached its Agreement by failing to provide the facilities enumerated in Article 8, Section 10 * * *." (Insertion ours). In view thereof the claim here must be sustained.

The claim, as it relates to the Telegraph and Signal Maintainer at Springdale should be allowed from May 26, 1947 to October 21, 1947 and, at Natrona, from May 26, 1947 until such time in December 1947, when the headquarters for the Maintainer T. & S. there met the requirements of Article 8, Section 10, of the parties' effective Agreement.

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 the Employees involved in this dispute are respectively Carrier and Employees 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 Carrier breached the provisions of the parties' Agreement.

AWARD

Claim sustained for the Maintainer T. & S. at Springdale from May 26, 1947 to October 21, 1947 and at Natrona from May 26, 1947 to such time in December 1947 when the headquarters there met the requirements of Article 8, Section 10 of the parties' Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1951.

DISSENT TO AWARD NO. 5219; DOCKET NO. SG-5083

The Division in its Opinion and sustaining Award first, expanded the claim by requiring Carrier to pay May 26 to October 21, 1947 when the Maintainers' headquarters were not at Springdale, but at Cheswick, Pa. The claim did not involve Cheswick. Second, arbitrarily sustained a claim for one hour's pay each day at time and one-half rate without evidence of what, if any actual minutes were consumed because of failure to fully comply with Art. 8, Section 10. See Award No. 5186.

For these reasons we dissent.

/s/ R. M. Butler
/s/ R. H. Allison
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ A. H. Jones