

Award No. 5499

Docket No. SG-5436

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway System that:

(a) The Carrier did not properly apply Article VII, Section 8, of the current Signalmen's Agreement when it failed to provide sufficient ventilation and other facilities, and to properly maintain camp cars for Signal Gang No. 2 on its Eastern Division.

(b) Mr. F. J. Pauler be reimbursed for actual lodging expenses he accrued during August 8, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, and 30, 1947 amounting to \$16.25.

(c) Mr. J. B. Crain be reimbursed for actual lodging expenses he accrued during August 8, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, and 30, 1947, amounting to \$16.25.

(d) Mr. W. T. Alexander, Jr., be reimbursed for actual lodging expenses he accrued during August 8, 11, 13, 15, 18, 20, and 22, 1947, amounting to \$10.50.

(e) Mr. R. J. Spencer be reimbursed for actual lodging expenses he accrued during August 8, 11, 15, 18, 20, and 22, 1947, amounting to \$9.00.

(f) Mr. H. E. Taylor be reimbursed for actual lodging expenses he accrued during August 8, 11, 13, 18, 20, and 22, 1947, amounting to \$9.00.

EMPLOYES' STATEMENT OF FACTS: Prior to the accrual of these claims the Local Chairman of the Eastern Division filed a formal complaint with Superintendent L. M. Olsen, at Emporia, Kansas, regarding the condition of the camp cars assigned to Signal Gang No. 2 in charge of Signal Foreman W. T. Alexander. The letter of complaint is herewith reproduced.

“Emporia, Kansas,
July 17, 1947,
101 So. Const. St.

Mr. L. M. Olsen, Superintendent,
Eastern Division, Santa Fe R. R. Co.,
Emporia, Kansas.

Dear Sir:

Please consider this as a formal complaint, and notice that signal camp cars A. T. 194367, and A. T. 195186 do not meet the re-

outfit cars which have been occupied by hundreds of employes through the years, who have accepted and rightly so the vicissitudes of the weather as something over which neither the Carrier nor the employes had any control.

It is significant that only five out of the nine men who normally occupied camp cars AT&SF 195186 and 194367 during the month of August, 1947, are claimants in this dispute.

The alleged lodging expense for which claim is made in the instant dispute was, of course, incurred by the five claimant employes of their own volition and was not authorized by the Carrier. A claim of the nature involved in the instant dispute is actually the equivalent of a claim for a penalty which may only be assessed against the Carrier if specifically provided for in the Agreement rules. The only rule of the current Signalmen's Agreement which the complainant organization representatives have cited as support for the instant claim in the handling thereof on the property is Article VII, Section 8, which does not, either by inference or otherwise, lend the slightest support to a claim for expenses. The complainant organization's appeal of this dispute to the Third Division, National Railroad Adjustment Board, can therefore only be viewed as an attempt to obtain a revision of the current Signalmen's Agreement, and specifically Article VII, Section 8, thereof, through the medium of an award of the Third Division which they hope will grant them concessions not at present provided for in the existing agreement rules. A revision of the rules contained in the current Signalmen's Agreement may only be accomplished in the manner prescribed by Section 6 of the amended Railway Labor Act and in Article VII, Section 11, of the current Signalmen's Agreement, which reads as follows:

"Section 11.—This agreement shall be effective as of February 1, 1946, and shall continue in effect until it is changed as provided in this Section or under the provisions of the Railway Labor Act. Should either party to this agreement desire to revise or modify the rules thereof, thirty (30) days written advance notice containing the proposed changes shall be given and conference held upon the expiration of such notice unless another date is mutually agreed upon."

The Third Division has repeatedly recognized in its awards that it has no authority to extend or modify agreement rules which may only be revised by negotiation. See Awards Nos. 3421, 4050 and the Awards referred to therein.

The Employes' claim in the instant dispute is entirely without support under the rules of the Signalmen's Agreement, and a denial thereof is clearly in order and is respectfully requested.

OPINION OF BOARD: This claim is based upon the contention that the Carrier failed to provide sufficient means of ventilation in the camp cars involved, as contemplated by Section 8 of Article VII of the Agreement, which rendered them unfit for lodging during extremely hot weather.

It appears that the cars in question were converted box cars with center doors, a window at each end, six or seven windows on each side, and three roof ventilators. From the evidence presented we are unable to say that such cars did not have sufficient means of ventilation.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.