Award No. 5626
Docket No. MW-5417

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

(Texas and New Orleans Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That effective April 1, 1949, the Carrier violated the effective agreement when it made deductions from the pay of Section Foremen at Marfa and Uvalde, Texas for water used at their residences;

(2) That each Section Foreman who has had deductions made from their pay for water, subsequent to April 1, 1949, be reimbursed for the amount deducted.

JOINT STATEMENT OF FACTS: This claim arises on the San Antonio Division of Southern Pacific Lines in Texas and Louisiana. An agreement effective December 1, 1937 between S.P. Lines and BofMofWE (light green cover) is on file with the Board. The Railroad Company discontinued producing water from its own sources and in March, 1949, began to secure water from municipal supply. When the water was secured from the public waterworks the Company made connections to supply the water but charged the Section Foreman at Uvalde $1.60 per month and two Section Foremen at Marfa $1.50 per month for their domestic water supply.

On April 28, 1949, General Chairman H. H. Reddick protested this charge. Various letters were exchanged and conference was held on November 7, 1949. The claim was declined, following conference, by Mr. T. C. Montgomery's letter of November 21, 1949. On September 28, 1950, Mr. H. H. Reddick gave notice of intention to submit this case to the Third Division, NRAB. Following that notice, the foregoing joint statement of facts has been agreed upon.

H. H. Reddick (signed)
General Chairman, BofMofWE

T. C. Montgomery (signed)
Manager of Personnel

The agreement in effect between the two parties to this dispute, dated December 1, 1937, and subsequent amendments and interpretations are by reference made a part of the Joint Statement of Facts.

cause the wages of claimants greatly exceed the wages required by law, and respectfully pray that the claim of the Brotherhood be denied.

(Exhibits not reproduced.)

OPINION OF BOARD. This case involves the propriety of a charge made by the Carrier against Section Foremen for water. Until April, 1949 the Carrier produced and furnished water from its own sources without charge to Section Foreman at Marfa and Uvalde, Texas. In March, 1949 the Carrier began to secure water from municipal supply and charged the Section Foremen for it by deductions from their pay.

ARTICLE VI—Rule 4 reads as follows:

> "The carrier will see to it that an adequate supply of water suitable for domestic uses is made available to employes living in its buildings, camps, or outfit cars. Where it must be transported and stored in receptacles, they shall be well adapted to the purpose."

The record shows that at some places such as Marfa and Uvalde the Carrier has pumping plants of its own and at other places none; that where the Carrier must purchase water from public water systems, Section Foremen are charged; and that no charge has ever been made for water produced at the Carrier's own pumping plants. We take this to be the established practice under the Agreement.

Beyond a statement in the Joint Statement of Facts that the Carrier "discontinued producing water from its own sources," it does not appear that either the Carrier's water or its water system ceased to exist at Marfa and Uvalde.

FIRST. The Rule simply provides that water shall be "made available." It does not provide whether the water will be charged for or furnished free. In this respect the Rule is indefinite; and under well settled principles the indefiniteness may be resolved and made certain by evidence of established practice.

SECOND. Under the established practice shown here the Rule authorizes a charge for water in localities where the Carried has either no sources of its own or no pumping plants; and the Rule does not authorize a charge for water in localities where the Carrier has always had and produced water from its own sources. The touchstone of the practice is the existence or nonexistence of the Carrier's water facilities.

In these circumstances, the deviation from the practice of furnishing free water complained of here was in violation of the Rule.

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 violated as above found.

Claim sustained.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1952.