Award No. 7282
Docket No. MW-7229

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it issued and refused to withdraw Maintenance of Way Bulletin No. 50 dated September 9, 1952, which specified that rental charges would be made for occupancy of housing facilities available on Section 105 at Albany, Oregon;

(2) The newly established rental charges referred to above were and are in violation of the Agreement between the parties to this dispute and in violation of the various National Wage Agreements agreed to and accepted by the parties to this dispute;

(3) The Carrier further violated the Agreement when it failed and refused to furnish water for domestic uses by the occupants of the aforementioned housing facilities and in lieu thereof, required the occupants to furnish water for domestic uses by and at the expense of the occupants thereof;

(4) The Carrier shall discontinue making the rental charges referred to in part (2) of this claim and shall reimburse each or any occupant of the Section Foreman's position on Section 105 at Albany, Oregon, for any such rental charges collected from such occupants by the Carrier;

(5) The Carrier shall furnish water for domestic uses by the occupants of the aforementioned housing facilities and shall reimburse the occupants thereof for all water charges paid by said occupants account of the violation referred to in part (3) of this claim.

JOINT STATEMENT OF FACTS: For many many years housing facilities and water have been furnished free of charge by the Carrier to its section foremen at certain locations. However, at certain other points on the Carrier's property, no such Carrier-owned housing facilities were available for occupancy by section foremen, one of such points being Section 105, Albany, Oregon.

Dixon at Albany, Oregon, being required to pay for water supplied the Company house which he occupies at Albany.

Mr. Dixon occupies a Company house at 1339 East Water Street, Albany, Oregon, under lease from the Railway Company. As a consideration for his use of this Company house, Mr. Dixon agreed at paragraph 2 of the lease—'the lessee shall pay the Railway Company as rental for the premises the sum of $10.00 per month which shall be paid monthly in advance on the first day of every month during the continuance of this lease. The lessee shall also pay for all heat, electricity, and water used on the leased premises during the term of the lease.'

Inasmuch as Mr. Dixon has agreed to pay for the water supplied to the building which he occupies as a residence, his claim that he be reimbursed for all water charges is not valid and payment is declined.

Very truly yours,

/s/ E. H. Showalter
General Manager"

Rule 47 of the current agreement, on which the Employes base this portion of the claim, reads:

"Water Supply. Rule 47. The Railroad will furnish an adequate supply of water suitable for domestic uses to employes living in its buildings, camps and outfit cars. Where it must be transported and stored, the receptacle shall be adapted to the purpose."

This rule contains no provision that the Carrier will furnish water **free of charge** to occupants of Company houses; and even if such a provision were to be implied, the Carrier submits that, in any event, it would not be applicable in this particular case because claimant Dixon agreed as one of the considerations for his use of the company building, that he, as lessee, would pay for all water used on the leased premises during the term of the lease. See copy of lease attached as Carrier's Exhibit "A".

In conclusion, the Carrier submits that it has shown that there has been no violation of any rule in the current agreement, nor of any provision of the various National Wage Agreements, cited by Employes, and it therefore requests your honorable Board to deny the claim of the Employes in its entirety.

All data in support of Carrier's position have been submitted to the Organization and made a part of this particular question here in dispute. The right to answer any data not previously submitted to the Carrier by the Organization is reserved by the Carrier.

(Exhibits not reproduced)

OPINION OF BOARD: Rule 48 of the current Agreement provides: "Section houses shall be for the use of section foremen and their families. Occupants of these houses shall keep the houses and surroundings neat and clean."

Rule 47 provides: "The railroad will furnish an adequate supply of water suitable for domestic uses to employes living in its buildings, camps and outfit cars. Where it must be transported and stored, the receptacle shall be adapted to the purpose."

From the joint statement of facts, it appears that in 1943 the Carrier purchased a house in Albany, Oregon "in order to provide section foreman's housing facilities on Section 105 at Albany, Oregon." From April, 1943

until September, 1952, this house was made available, with water supply, free of charge for the use of the employe filling the position of section foreman on Section 105. In September, 1952, a vacancy occurred in this position. It was bulletined and the bulletin included the statement that "living quarters are **NOT** provided for the section foreman, but company house is available for nominal rental fee."

Claimant bid in the position and was told that in order to occupy the house that had been furnished free of charge to the former section foreman, he would be required to sign a lease requiring him to pay ten dollars a month for rent and, in addition, to pay for his water. Claimant signed the lease, although he protested at the time against being required to do so.

The claim is that by refusing to furnish the house and water free of charge, the Carrier has violated the rules set out above. Carrier contends that Rule 48 does not require it to furnish a section house at Albany, and does not prevent it from entering into a private agreement to rent its propery there to Claimant. Carrier further contends that the requirement to furnish water in Rule 47 does not mean that water must be furnished free of charge.

The house in question is a "section house" within the meaning of Rule 48; the joint statement of facts makes it clear that it was purchased for that purpose. The language of the rule to the effect that section houses shall be "for the use of" section foremen is ambiguous as to whether this "use" must be free of charge or may be subject to a rental. In the case of such ambiguity in a rule, it is proper to look at the past conduct of the parties in order to determine how they have interpreted it, and thus to determine what the rule was originally intended to mean.

The agreed-upon statement of facts recites that in the past the Carrier has provided housing and water free of charge to section foremen at some locations, and has provided no such facilities at other locations. There is no indication that prior to the incident here in question, the Carrier has made such facilities available on a rental basis. It appears that where section houses have been provided at all, they have been provided free of charge, and free water has been provided along with them. Thus, by their practice, the parties have interpreted the language of the rule to mean that section houses, where provided, shall be for the **free** use of section foremen.

Carrier argues that for a long period, it provided no section house at Albany; and that the reason such a facility was provided in 1943 was because it was necessary to attract employes in the then tight labor market. Since that emergency situation no longer exists, Carrier argues, it has a right to go back to the former practice of providing no section house. The rental offer, in its view, is entirely voluntary and not under the Agreement at all. Claimant insists that the section house was provided in response to its position that one was required under Rule 48 and its demand that Carrier provide one under that Rule. We do not find it necessary to resolve this factual controversy; neither need we decide the question of whether the rule requires the establishment of a section house where one has not been established previously. No matter what reason impelled the Carrier to purchase the section house at Albany, it was purchased as a section house and was made available to the foreman on the same basis as other section houses on the property. The fact that for many prior years there had been no section house at Albany does not change the situation. Once having provided a section house, the Carrier became bound to make it available for the free use of the section foremen under the rule as interpreted by past practice. Rule 48 was incorporated without change into the 1947 agreement, the current one between the parties, thus continuing the interpretation placed upon it by the past practice of the parties. The section house at Albany was in existence in 1947 and must have been intended to fall within the rule just as all other section houses in existence at the time. We find that under the rules cited, Carrier was obligated to continue to provide the house and

water to the incumbent of the section foreman position at Albany without charge. The fact that Claimant signed a lease obligating him to pay rent and water charges does not change the obligation of the Carrier under the Agreement.

Since we have decided this case under specific agreement rules, there is no need to go into the arguments of the parties with reference to Section 3 (m) of the Fair Labor Standards Act and the provisions of the various national agreements relating thereto. Awards 6738, 6952 and 4989, cited by Carrier, all involved this issue and in none of those cases was there a specific agreement rule concerning section houses. Award 4532 involved a specific rule, and was decided under that rule on facts and reasons not applicable here.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 21st day of March, 1956.