

Award No. 8631

Docket No. TE-10248

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna and Western Railroad, that:

Carrier neglected or otherwise failed to comply with the Time Limit Rule, and because of such failure to observe said Time Limit Rule, it shall now be required to allow as presented the following grievance:

"December 9, 1956

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Mr. R. W. Jones
Supt. DL&W R.R.
Scranton 3, Pa.

Dear Mr. Jones:

This is a grievance in behalf of Agent-Operator R. P. McCann, Whitney Point, N. Y. rel to an order issued by Trainmaster H. E. Cyphers in which Maintenance of Way department was given a room in station for their motor car and equipment.

Under Section 28, 1 (d), extracts of the Labor Law of New York State calls for and I quote, 'The Sanitation and adequate shelter as affecting the welfare and health of all persons employed by any railroad, pullman or express company', end of quote. The fumes of this motor car which filter in the office and waiting room are jeopardizing the health of Agent-Operator McCann.

Also under The Industrial Code, State of New York Department of Labor, Board of Standards and Appeals, under Rule 42-6.1, Maintenance of Way Facilities, Rule

42-6.2, Section Houses, Rule 42-6.2.1, Where Required, and I quote, 'Where regularly assigned Maintenance of Way employees are not accommodated by camp facilities, section houses or other shelter which comply with the requirements of this section shall be provided and maintained at points where such employees report for or are relieved from duty,' end of quote.

Under Section 28, 1 (d), Extract of The Labor Law of New York State and which I have established is injurious to the health and welfare of Agent-Operator McCann of Whitney Point, N. Y., I wish that you would please take immediate action to correct this condition.

I have been advised that the shanty which the Maintenance of Way formerly occupied, still remains where it has always been and in order to comply with Rule 42, Sanitation and Shelter for Railroad, Pullman and Express Company Employees, I request their motor car and equipment be moved back to their former occupancy.

Trusting you will correct this condition, I am

Yours truly,

/s/ F. T. Simrell"

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively carrier and employee 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;

That the dispute was certified to the Third Division of the Adjustment Board ex parte by the complainant party; and

That hearing thereon was waived by the parties and under date of December 5, 1958, the parties jointly addressed a formal communication to the Secretary of the Third Division requesting withdrawal of this case from further consideration by the Division, which request is hereby granted.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December, 1958.