

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad that:

(a) The Carrier violated the current Signalmen's Agreement when it failed to supply first-aid kits and thermo water cans for use on all Signal Maintainers' motor cars on the Missouri Kansas Division.

(b) The Carrier now furnish as standard equipment on all Signal Maintainers' motor cars on the Missouri Kansas Division first-aid kits and thermo water cans for transporting drinking water. (Carrier's File: L-130-R-77.)

EMPLOYES' STATEMENT OF FACTS: The claimants in this dispute are all the Signal Maintainers employed on the Missouri Kansas Division.

On July 23 1956, A. E. Ketterman, Local Chairman, served notice on J. E. Webb, Signal Supervisor, to provide two items of essential nature for use on all Signal Maintainers' track motor cars. The two items needed and requested were a first-aid kit and a thermo water can for transporting drinking water. Ketterman's letter of July 23, 1956, is reproduced as follows:

"At the last regular meeting of Local 78 held in McPherson, Kansas, July 7, 1956, it was unanimously decided to ask the carrier to provide two items for use on track motor cars for maintainers. These are, a first-aid kit and a thermo water can.

These two items are not anything out of the ordinary or unreasonable. The first-aid kit is standard equipment on most all trucks, shops, and gangs; and under the right condition, it could save a life. The thermo water can equipped with ice container is very essential in this hot weather to a man working out in the sun all day.

Both these items are not expensive and we urge you to comply with our request."

This letter will serve as our request for you to furnish these two items. Both these items are not expensive, not out of the ordinary or unreasonable. Most every truck, shop or gang has its standard equipment, first aid kit and thermo water can.

Will you please comply with our request?

Yours truly,

/s/ A. E. Ketterman

cc: J. E. Webb
R. A. Watkins
K. A. Lukins."

(Emphasis ours.)

The Carrier again emphasizes the fact that the claim herein in dispute does not represent a dispute or grievance such as to fall within the scope of the existing agreement concerning rates of pay, rules and working conditions or Section 3 of the Railway Labor Act as amended June 21, 1934 and, therefore, the National Railroad Adjustment Board is wholly without jurisdiction and, accordingly, the contention of the Committee should be dismissed and the case removed from the docket of the Board.

It is hereby affirmed that all of the foregoing is in substance known to the Organization's representatives.

OPINION OF BOARD: The Claim as filed here is that the carrier violated its agreement with the Brotherhood when it failed to supply first-aid kits and thermo water cans for use on all Signal Maintainers' motor cars on the Missouri Kansas Division.

It is the Brotherhood's position that the merits of the claim are not open to consideration because the carrier failed to comply with Article V of the August 21, 1954 Agreement which provides that the carrier shall give 60 days' written notice of disallowance of a claim or grievance with its reasons therefor, otherwise such claim or grievance shall be automatically allowed without prejudice to subsequent similar claims.

The carrier maintains that the Board lacks jurisdiction because this dispute is not within the scope of Section 3(i) of the Railway Labor Act as amended; that the employees seek to obtain a new rule contrary to Section 6 of said Railway Labor Act, and that it did not violate Article V of the August 21, 1954 Agreement for the reason that the organization's initial communication of July 23, 1956 from the Local Chairman to the Signal Supervisor was not a claim or grievance within the meaning of said Article V.

The Local Chairman wrote the Signal Supervisor on July 23, 1956 stating that at the July 7, 1956 meeting of the Brotherhood Local, it was decided "to ask the carrier to provide two items for use on track motor cars for maintainers. These are, a first-aid kit and a thermo water can." The letter pointed out what the writer considered was the desirability of these items, asserted they were inexpensive, and urged that the request be granted. This letter was acknowledged under date of August 1, 1956 with the statement that it was being referred to the Signal Engineer.

Under date of October 8, 1956, the Local Chairman wrote Superintendent Drew referring to his earlier letter to the Signal Supervisor and again requesting the carrier to furnish the two items mentioned.

The Superintendent declined this request on October 13, 1956. On October 30, 1956, the Local Chairman requested reconsideration by Superintendent Drew and referred to Rule 77 of the Signalmen's Agreement which reads as follows:

"Rule 77. Headquarters. Headquarters shall be properly heated and lighted and shall be kept in good condition. They shall be furnished with chairs, desks and lockers and toilets shall be accessible. Drinking water shall be furnished."

In subsequent correspondence from the General Chairman to the carrier's Manager of Personnel, reference was also made to Rule 75 to support the contention of the employees. This Rule, entitled "Tools" provides:

"The railroad will furnish the employees such tools, except pocket tools, and equipment as are necessary to perform their work."

The "claim or grievance" which the Brotherhood contends must be sustained under the provisions of Article V of the August 21, 1954 Agreement is contained in the Local Chairman's letter of July 23, 1956. It is unquestioned that the carrier did not decline to furnish first-aid kits and thermo water cans on track motor cars used by Signal Maintainers until October 13, 1956, and that no written reason for the denial was then given. Did the letter of July 23, 1956 constitute a claim or grievance within the meaning of Article V of the August 21, 1954 Agreement? We think the claim or grievance contemplated by said Article V is one based on an underlying duty or obligation of the carrier to the employees expressly or impliedly imposed on it by the Collective Bargaining Agreement or by law.

However reasonable or meritorious the employee's request may otherwise be, if it is not based on such an obligation, it is not the kind of claim or grievance which must be denied with stated reasons within 60 days at the risk of being automatically allowable.

The Local Chairman's letters of July 23 and October 8, 1956 suggested no contractual basis to support his request nor does the record afford indication of any interim discussion between the parties which might suggest a legal or contractual basis for requiring the carrier to furnish the items mentioned. Neither of these letters purported to be a claim or grievance in the ordinary meaning of the term. The first mention of a contractual rule appears in the Local Chairman's letter of October 30, 1956 wherein he referred to Rule 77 above quoted.

We conclude that the letter of July 23, 1956 did not constitute a claim or grievance within the meaning of Article V of the August 21, 1954 Agreement and that failure to disallow such request did not violate that Agreement.

Rules 75 and 77 are not applicable to a request for first-aid kits and thermo water can on Signal Maintainers' motor cars. Rule 75 is entitled "Tools" and refers to such tools and equipment as are necessary to perform work. We think the two items mentioned are not reasonably includible in those categories, however convenient or helpful they might be to the comfort

and welfare of an employe in the course of performing his duties. Rule 77 deals with items which the carrier is required to furnish at headquarters and clearly has no application to track motor cars used away from such points. We are unable to find any contractual support for the claim presented.

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: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 13th day of October, 1961.