Award No. 12131
Docket No. SG-11141

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, especially Article 8, Section 10, when it failed to furnish adequate facilities at the headquarters at Wooster, Ohio.

(b) The Carrier now compensate the employes of the Wooster Signal Gang for one hour each day at their respective pro rata rates of pay, beginning August 1, 1956, and continuing until the violation ceased. [Carrier's file: Docket No. 59—Lake Region Case No. LR-24919.]

EMPLOYES' STATEMENT OF FACTS: Prior to January 16, 1956, the Telegraph and Signals Headquarters at Wooster, Ohio, was inadequately housing four regular maintenance men. With the imminence of a signal gang possibly being set up in these same quarters, the Brotherhood attempted to get action instituted to secure larger headquarters facilities. Before any action had been taken, the gang was moved into the same headquarters at Wooster with the maintenance men, resulting in inadequate air and seating space, and no lockers were furnished, requiring the gang employes to convey their tools and work clothing to and from their respective homes each day on their own time. In addition, the Foreman had no desk to do any of the paper work required of him, nor any place to file same.

On or before March 14, 1956, the Brotherhood began writing letters in an attempt to get the condition at Wooster corrected. On **March 26, 1956, Supervisor Communications and Signals R. E. Harlow** wrote the following letter to **Local Chairman J. W. Bayer:**

"Referring to your letter of March 14, 1956, concerning headquarters building for Wooster, Ohio, and previous correspondence on the same subject for Mansfield, Ohio:

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that under the provisions of the applicable rules of the controlling Agreement and the Railway Labor Act, as amended, the Third Division, National Railroad Adjustment Board, cannot properly grant the claim of the employes involved in this dispute. The Carrier has shown that no valid basis exists for a finding by this Board that the Carrier failed to furnish the proper headquarters facilities, other than chairs and that in this latter respect, the Organization has not submitted one iota of proof showing damages or expenses incurred by reason of such failure. Therefore, your Honorable Board is requested to deny the Employes' claim in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a proper record of all of the same.

All data contained herein have been presented to the employes involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim alleges a violation of Article 8, Section 10, of the Agreement, which reads as follows:

> "Headquarters shall be provided for all employes and shall be kept in good and sanitary condition. They shall be properly heated and lighted and sufficient air space provided. Drinking water and water suitable for domestic use shall be furnished. They shall be adequately furnished with chairs, desks and lockers, and toilets shall be accessible."

Claimants were instructed to use a Signal Headquarters at Wooster, Ohio, prior to January 16, 1956, until December of the same year. Claimants allege the facilities were inadequate in that the building at the time contained but two chairs, three lockers, and one desk, all in a space not larger than 23 feet by 18 feet. At the time, the building was used by the regular maintenance gang of four men, and the Claimants who, at various times, numbered from six to twelve men.

The Carrier does not deny the employes' description of the headquarters. It alleges, that with the exception of the number of chairs, the facilities were

adequate, in that the Claimants' assignment was temporary, and that there was furnished in addition, two combination tool and material cars in which the Claimants could store their tools and belongings.

The rule is quite clear that the headquarters building must be furnished with adequate equipment. There is some room for interpretation of what is the meaning of adequate, and this might vary under the circumstances of each case. Here, the Claimants were assigned for in excess of nine months. This is a rather long temporary assignment, and not to be compared to an assignment of one or two days. For nine months' use, the facilities should be complete. Here for a minimum use of ten men, there were but two chairs and three lockers. This would not be adequate under ordinary conditions, and the Carrier has made no showing that they were adequate here.

The Claim is for one hour for each day of use, for the period of Claim, during which the employes were required to transport their tools and work clothing because of inadequate facilities furnished. The employes stress that the Claim is one for time, not a penalty.

There have been three previous sustaining awards on this property construing Article 8, Section 10. They are Awards 5186, 5219, and 5284. Award 5186 concerned a Claim for failure of the Carrier to provide water at the headquarters, the employes carrying water from their homes for drinking and washing, and claimed an hour for such service. The award sustained the Claim, not for one hour, but only to the extent of the time required by each employe, on a minute basis, to transport the water. No specific determination was made of such time required. Award 5186 reads in part:

> "It must be conceded that the Agreement does not contain a specific provision for a penalty in case of nonperformance of the obligation imposed by Article 8, Section 10. It is also well established by the precedents of previous awards that the Board will not impose a penalty where none has been specified in the Agreement. This is a sound doctrine. But, it does not necessarily follow that where no penalty has been provided, this Board is helpless and without authority to make an award which will tend to enforce compliance with the terms of the contract."

Award 5219 concerned a claim for one hour for each employe, for each day a headquarters was not provided, and the employes were required to transport clothing and tools back and forth to their homes. The award sustained a one-hour time claim. Award 5284 referred a like Claim back to the parties on the property for the purpose of determining damages, such damages being inclusive of the extra time consumed by the employes and the cost of use of the automobiles.

It is clear that in the three awards above cited that there is general agreement that the contract provides no penalty. The language of each award makes it equally clear that in each case damages were to be awarded as such damages were proved. Award 5219 allows that one hour Claim, without a showing of damage, and to that extent, is inconsistent with its own reasoning. Awards 5284 and 5186 sustain a finding of violation, but remand the Claim to the property for a determination of damages.

There has been no showing of any change in circumstances which would warrant the overturning of the previous awards cited. In the instant Claim,

the Claimants have alleged that tools and clothing must be taken home, but have failed to establish the measure of damages. The Carrier has alleged that it is not the practice to store such articles on the premises, and such employes carry their tools, and wear their work clothing to and from work, irrespective of whether adequate facilities are furnished in the headquarters. Thus, a question of fact was raised on the property, which cannot be determined by this Board. The parties were given adequate warning in previous awards of the necessity of proving damage. Here, while there has been a violation of the Agreement, the Agreement does not provide a penalty, and damages have not been proved. The Claim, therefore, cannot be sustained.

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

That the parties waived oral hearing;

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 Carrier has breached the Agreement, but the Claim cannot be sustained as per the Opinion of the Board.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.

DISSENT TO AWARD NO. 12131, DOCKET NO. SG-11141

Award No. 12131 is a travesty which completely ignores elementary principles, and fails to apply the agreement.

The majority faced no problem in holding that the Carrier had violated the agreement, for, indeed, the Carrier candidly admitted the violation. Thus holding, it is axiomatic that, when one party to a contract fails to perform, the other party has been damaged, and the extent of such damage is the only question remaining. Even if the extent of damage is truly not determinable from the facts of record, a denial award is improper. The Board should have followed its precedent in Award No. 5284, interpreting the same rule.

Award No. 12131 is in error; therefore, I dissent.

W. W. Altus
Labor Member