

Award No. 12503
Docket No. MW-11402

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolfe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the Agreement when it refused to reimburse B&B employes C. C. Smith, J. H. Moore, H. O. Huebel and C. E. Glover for meal expenses incurred on July 28, 29, 30 and 31, 1958, because of the inability to keep food from spoiling when the refrigerator failed to function.

(2) The Carrier shall now reimburse the claimants for meal expenses as follows:

C. C. Smith	\$ 8.70
C. E. Glover	\$ 9.35
J. H. Moore	\$11.20
H. O. Huebel	\$ 8.90

EMPLOYEES' STATEMENT OF FACTS: Upon receipt of Chief Engineer Carter's letter of August 11, 1958, advising that meal expense accounts submitted for July were disallowed, claimant Glover sent the Chief Engineer's letter to General Chairman Jones and added thereto the following:

"E. Jones -- Denison

Refrigerator quit working. little effort was made to have repairs made -- ruined our food several times -- was forced to eat out several weeks.

We started claiming for expenses Paid after they quit trying to get it fixed. I finally had to take it to a service place. I got invoice today for repairs \$12.50 box is OK now. Air conditioner in house trailers has never worked & it is Hot as H.

The claim is wholly without merit and agreement support, and Carrier respectfully requests the Third Division to deny the claim.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim involves the Carrier's responsibility for food spoilage in a refrigerator. The record indicates that the Claimants knew the refrigerator was not functioning properly. The trouble started in San Antonio. At Lockhart they called a service man, who told them the trouble was low voltage. At Smithville, because the refrigerator cut in and out, they removed their perishable food and called another serviceman. He came after hours when no one was there and did not service it. Claimants moved the next day to Eureka and set up at the roundhouse, where 250 feet of cable was necessary, instead of at the yard house. There, despite the history of the refrigerator, they stocked up with food which spoiled because the refrigerator failed again.

The record contains no evidence that Carrier was in any way remiss. It had furnished the refrigerator and servicemen to repair same. When the motor burned out, Carrier replaced it. Carrier cannot be held responsible, since it furnished the equipment and promptly repaired it or replaced it when Claimants requested it.

Claimants, on the other hand, after being warned that the refrigerator would not work on low voltage, set up in a place away from other gangs for their own convenience, using an extra long extension line for power, thus lowering the voltage. Despite their knowledge that the refrigerator serviceman they had summoned had not yet repaired the refrigerator, they stacked it with food. When the refrigerator cut off, they did nothing to protect their foodstuffs although ice was available. Carrier cannot be held responsible for the damage which resulted from Claimants' negligence.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.