

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**PENN CENTRAL COMPANY, NORTHEASTERN REGION,
SPRINGFIELD DIVISION**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Boston and Albany Railroad (New York Central Railroad Co., Lessee):

On behalf of Messrs. Burrill, Fegreus, O'Donnell, Guthro, Lynch, Hall and Spellman for two (2) hours' pay at the time and one-half rate they work with headquarters at the Signal Shop in East Brookfield, Massachusetts, from November 7, 1967, until such time as their headquarters are made to conform with Rule 10(b). This time will compensate the named employes for their time and effort to provide themselves sanitary washing and toilet facilities which are not provided by Carrier. [Carrier's File: 114-B (SG68.2-B)].

EMPLOYEES' STATEMENT OF FACTS: This is a claim on behalf of signal shop employes for two hours' pay at the time and one-half rate for each day they work, this to compensate them for time and effort they expend to provide for themselves sanitary washing and toilet facilities which we contend Carrier is obligated to furnish under Rule 10(b) of the current Signalmen's Agreement.

The claim was initiated in a letter dated December 7, 1967, to begin November 7, 1967 and continue until the facilities conform to Rule 10(b). The pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibits Nos. 1 through 11. As indicated thereby, this dispute has been handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of April 1, 1952, as amended, which is by reference thereto made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is on file with this Division an agreement governing rules and rates of pay applicable to employes represented by The Brotherhood of Railroad Signalmen on the Springfield Division

Please be reminded that this is a continuing claim and as you will not honor the claim now or in our meetings I must forward (sic) this claim to our national officers (sic) for further handling."

Carrier next received copy of BRS President C. J. Chamberlain's notice to Executive Secretary Schulty of this Division, dated December 16, 1968, of the Organization's intention to file the instant claim with your Board.

OPINION OF BOARD: Carrier admits that as of the time of filing of the Claim the headquarters of the Claimants did not conform to the contractual mandate of Rule 10(b) of the Agreement which reads:

"Headquarters with suitable lockers and equipment shall be provided for employees and shall be kept in good and sanitary condition.

Reasonable washing and toilet facilities will be made available." Further, Carrier stated it was undertaking the work of making improvements to satisfy the standards imposed by both the statutes of the Commonwealth of Massachusetts and Rule 10(b).

We find that Carrier herein was in violation of Rule 10(b). See our Award No. 5186 which involved a like dispute.

Organization failed to adduce in the record made on the property any evidence from which we can make a finding of measure of damages suffered by the named Claimants.

We do not agree with the procedure prescribed in Award No. 5186---remanded to the property "to determine * * * the extent of" Claimants "time devoted before and after their assigned hours in supplying facilities, if any * * *" The burden of proving damages in the record made on the property was vested in Organization. If we remanded, as was done in Award No. 5186, we would be re-opening the record both for the purposes of introducing new evidence and the raising of new issues. Our jurisdiction compels us to dispose of the dispute on the basis of the record before us made on the property, which stands closed. This finding is not to be confused with our established practice in cases where actual damages have been proven to award that the precise amount of compensatory damages be ascertained from the records of a carrier kept in the ordinary course of business --- this procedure is one of legal certainty.

In the instant case Organization has done no more than to declare that Claimants were damaged and prays for an unsupported arbitrary amount of compensatory monetary damages. Issue was drawn by Carrier's averment that Claimants suffered no damages. This put Organization to its proof. It failed to make a *prima facie* case by introducing, on the property, material and relevant evidence of probative value.

We concur with the reasoning in Award No. 5186 that a party to a contract is obligated to comply with its terms; and, this Board has the "authority to make an award which will tend to enforce" future "compliance with the terms of the contract."

Since we have no statutory authority to enjoin future like violations by issuance of cease and desist orders the only remedy available to us is the

assessment of exemplary monetary damages. Applying this remedy we will award that Carrier pay to each of the Claimants named in the Claim the amount of twenty-five dollars (\$25.).

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 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 violated the Agreement.

AWARD

Claim sustained with monetary compensation to Claimants to the extent prescribed in Opinion, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

DISSENT TO AWARD NO. 18118, DOCKET SG-18258

The majority correctly holds that there was no evidence presented from which a finding of damages to the claimants could be made; and that the organization failed to meet its burden of showing such damages.

However, the majority inconsistently then purports to award \$25.00 to each claimant as "exemplary" damages. Such an action is wholly unsupported by the agreement and by the record before the Board and is beyond the Board's jurisdiction.

"Exemplary" damages are legally the same as punitive damages and may be awarded by courts only where a defendant's conduct has been wanton, reckless, malicious or oppressive, American Jurisprudence, 2nd, Volume 22, Section 236. No such action by the carrier was shown in this record. It is well established that punitive damages may not be allowed for breach of contract except in exceptional cases where the breach arose out of wanton or malicious conduct. Ibid, Section 245.