



Award No. 18904
Docket No. SG-18683

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 59, when it failed and/or refused to properly maintain the camp cars of System Construction Gang No. 4 from January 4 to February 7, 1969.

(b) Carrier should now be required to reimburse Leading Signalman J. D. McDonald and Signalman C. D. Wilcox for motel expenses incurred as follows (all dates inclusive):

January 4 to 12, 1969	— \$65.52 each
January 21 to 28, 1969	— 54.08 each
February 4 to 7, 1969	— 27.04 each

[Carrier's File: G-381-20; G-381]

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of February 1, 1967, Rule 59 of which reads:

"Effective as of May 6, 1966, on-rail camp car outfits shall be furnished for employees assigned to gangs and to signal testers. Employees shall not be permitted to live in or occupy any portion of the car which is used for tools or materials. Camp cars shall be maintained in good and sanitary condition and free from leaks. Bathing facilities with hot and cold water shall be furnished with adequate storage facilities to accommodate the employees assigned to the outfit. Sufficient air space and recreation space sufficient to accommodate the number of men in the gang shall be provided and shall be used for no other purpose. Kitchen, dining and sleeping cars and recreation space shall be screened. All cars shall be equipped with furnishings in proper proportion to the number of men to be accommodated. They must be equipped with springs consistent with safety and character of car and comfort of employees. It will be the obligation of

including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: System Construction Gang No. 4, Foreman R. W. Muse, was located at Chattanooga, Tennessee during the months of January and February of 1969. In addition to the foreman, the gang consisted of the following:

D. M. Wright
W. G. Cobb
R. J. Ward
C. D. Wilcox
J. D. McDonald

Messrs. Wright, Cobb and Ward were assigned to L&H Camp Car 43490, Messrs. Wilcox and McDonald were assigned to L&N Camp Car 43494, and Foreman Muse was housed in the foreman's camp car.

On January 4, 1969, Messrs. Wilcox and McDonald, without authority, moved into a motel in Chattanooga, claiming that there was not sufficient heat in their car, and furthermore that they could not bathe for the shower was not functioning properly. They remained at the motel during the period of time shown in the claim.

Claim was presented in favor of Wilcox and McDonald for the Motel expense, but since the employees were not authorized to stay at the motel at the carrier's expense, and they did so in violation of the current working rules agreement, the claim was declined.

Copy of the claim and copies of correspondence exchanged in connection with the claim are attached as Carrier's Exhibits A through F.

There is on file with the Third Division a copy of the current working rules agreement, and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were assigned to a System Construction Gang. Camp cars were provided by Carrier for the use of the men in the gang. Claimants contend that the fuel oil heaters and shower facilities in the cars failed to perform properly, in violation of Rule 59 of the Agreement:

"Effective as of May 6, 1966, on-rail camp car outfits shall be furnished for employees assigned to gangs and to signal testers. Employees shall not be permitted to live in or occupy any portion of the car which is used for tools or materials. Camp cars shall be maintained in good and sanitary condition and free from leaks. Bathing facilities with hot and cold water shall be furnished with adequate storage facilities to accommodate the employees assigned to the outfit. Sufficient air space and recreation space sufficient to accommodate the number of men in the gang shall be provided and shall be used for no other purpose. Kitchen, dining and sleeping cars

and recreation space shall be screened. All cars shall be equipped with furnishings in proper proportion to the number of men to be accommodated. They must be equipped with springs consistent with safety and character of car and comfort of employees. It will be the obligation of the Railroad Company and a duty of the foreman or tester to see that cars are kept clean and in good and sanitary condition at all times, which shall be done at company expense. Drinking water, water suitable for domestic uses, free from rust and other matter, fuel, electric or other suitable refrigeration and suitable electric receptacles for the number of men to be accommodated shall be furnished. Furnishings referred to herein shall include stoves, kitchen and dining utensils and dishes, soap, chairs, lockers, spring cots, mattresses, blankets and pillows.

The company will furnish and pay the wages of cooks and in the event the cook is absent, expenses for meals will be allowed.

By agreement between the management and the General Chairman, off-rail commercial trailers which meet the above requirements may be substituted for on-rail cars."

The Carrier disputes the degree of discomfort and inconvenience to which Claimants were subjected but admits deficiencies in the equipment which we find rendered the camp car below the standards prescribed in Rule 59. Carrier defends the claim herein, however, on the ground that the Agreement itself provides a procedure and a remedy for non-compliance with Rule 59 and Claimants neither invoked the procedure nor sought the remedy to which they may have been entitled. Carrier relies on Rule 29(c):

"Effective as of May 6, 1966, complaints of camp car outfits or any facility furnished by the railroad for living accommodations failing to meet requirements of the rules will be made in writing to the General Superintendent Communications and Signals by the General Chairman, setting out in detail the items complained of. Within 30 days after date of the complaint, a joint investigation will be made by the General Chairman and General Superintendent Communications and Signals or Signal Engineer. If the complaint is found to have merit, the conditions will be corrected within 30 days after the investigation and if not corrected at the end of such 30-day period, the employees may obtain suitable living accommodations at the expense of the carrier."

The claim herein is for reimbursement of motel expenses incurred by Claimants when they abandoned the camp cars without following the procedure specified in Rule 29(c). We must deny the claim. Rule 29(c) clearly provides that employees are entitled to such reimbursement only if the Carrier fails to effect timely repairs after formal notification of the deficiencies of which complaint is made. Claimants are not permitted to resort to self-help in these circumstances. Their failure to comply with Rule 29(c) is fatal under the Agreement.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.