

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23022  
Docket Number MW-22750

Joseph A. Sickles, *Referee*

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(  
(St. Louis-San Francisco Railway **Company**)

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

(1) The Agreement was violated when the members of Mobile Track Gang **164** were not paid the per diem allowance provided for in Agreement Rule 82(b) during the period **December 6 - 31, 1976** (System File **B-1364/D-9400**).

(2) Foreman T. A. **Franklin**, Asst. Foreman **M. R. Casey** and gang members **J. D. Shores**, **L. W. Simon**, **J. L. Anderson**, **L. D. Anderson**, **D. R. Sullivan**, **P. E. Greenfield**, **C. D. Montgomery**, **W. R. Nichols**, **D. E. Pepper**, **Noble Wilbanks**, **T. M. Frees**, **G. C. Boler**, **R. B. Harris**, **D. O. Owens** and **M. E. Crudginton** each be allowed the difference between what they should have been allowed at **\$13.26** per day (Rule 82-b) and what they were allowed as meal and lodging expense for each day within the period extending from December 6 through 31, 1976."

**OPINION OF BOARD:** The Claimants are assigned to Mobile Gang **164**, which is customarily furnished with camp cars, and the members of the gang obtain their meals and lodgings therein. The cars are moved from point to point as the work progresses.

The Claimants assert that during the period December 6 through December **31, 1976**, the camp cars which were furnished to the gang were unfit for human occupancy, and as a result, the **Employees** were compelled to obtain their meals and lodgings elsewhere. Thus, the Employees insist that they are entitled to a per diem allowance pursuant to the provisions of Rule 82(b):

"(b) Except as otherwise provided in these rules, and when neither meal nor lodging facilities is provided by the Carrier, a per diem allowance of **\$13.26** per day will be made to mobile gang employees for each day on which such employees perform compensated service."

Just prior to the claim dates, the gang was working off of their assigned territory in a location where the outfit cars could not be spotted and hooked up to utilities and, accordingly, the gang members were paid the per diem allowance specified in Rule 82(b). Starting on December 6, the **Employees** were returned to their assigned territory and although the outfit cars were parked on the **Fordick Track**, the members continued to refrain from using the outfit cars at nights end on weekends; but instead, preferred to drive borne. It was not until January 7, 1977 that the General Chairman filed the subject claim.

Noting that the crew chose to remain silent **during** the entire month of December, 1976, the **Carrier** cites **Rule 202**, which states that the **Foreman in Charge** of the outfit **cars** must see that they are **kept in** a safe, clean and sanitary condition and when repairs are necessary, prompt report must be made to the immediate Supervisor. Thus, the **Carrier** argues that it is rather **obvious** that the condition of the cars was totally immaterial **to** the gang members, because they had elected not to stay with the cars, but **rather**, desired to continue to drive home and be with their families.

The condition of the cars, as described in the record, suggests that they left much to be desired, and the **Carrier** seems to concede that the cars **in** question were not ideal **for living** purposes. Nonetheless, it **is** inconceivable to the Board that if the cars **were** uninhabitable and **unfit for human living**, the **Employees** would not have made an appropriate complaint immediately, rather than **waiting** for an extended period of **time** after the "claim period." That factor, coupled with the contractual **requirement that the Foreman take certain affirmative action** compels us to deny the claim.

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 the **Agreement** was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, **this 17th** day of **October 1980**.