

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23431  
Docket Number SG-23093

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad **Signalmen**  
{ **Southern Railway** Company

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood of Railroad **Signalmen** on the Southern Railway Company:

Request that Carrier terminate the practice of releasing some of the motel rooms used by signal gangs before the end of the **work** week, which results in **more** than two employes being required to use the **same** room the last day of the work period." (General Chairman file: **SR-38**. Carrier file: **SG-331**)

OPINION OF BOARD: The instant dispute arises **over** Carrier's issuance of a Notice dated February 2, **1978**, which specified that Carrier would **only** hold two (2) motel rooms for System Signal Gang **employees' clean-up** before returning home after completing work on the last work day of their **assignment**. Organization contends that said Notice is a violation of Rule **12(a)** of the parties' System Gang Agreement dated April **9, 1974** effective May 1, **1974** and revised December **3, 1975**. In addition, Organization further contends that the effect of said notice ("**...more** than two men occupying one twin bedded **room**"), "**causes an undue** hardship on the **employees** **... nor** is it healthful, sanitary or suitable..." Carrier's position stated simply, is that: (1) Rule **12(a)** of the applicable System Gang **Agreement(s)** "contemplates **accommodations** before a work day, not after" and therefore does not specifically require any rooms to be held on the last work day of the **work** period; (2) Carrier's position is supported by both past practice and reason; and (3) Carrier's issuance of February 2, **1978** Notice was not the institution of a new policy, but instead was merely a reaffirmation of an existing policy which recently had not been properly enforced **by some Signal** Foreman.

The Board has carefully read and studied the complete record in this dispute and finds that Carrier's position is the **more** persuasive of those which have been proffered and which, therefore, must prevail.

While it is **indeed** true that, when read alone, **the** disputed language of Rule **12(a)** is ambiguous, it is equally true that ever since the System Gang Agreement was agreed upon by the parties in **1974**, Carrier's practice, which apparently **was known** by Organization but which remained uncontested by same, has been to retain only two (2) rooms for clean-up purposes following the System Signal Gang's completion of work on the last day of a **work** period. Given these facts, together with an adherence to the **arbitral** principle which establishes that "**...where** language in a contract is ambiguous the intention of the **parties** can best be ascertained by the past practice of the parties" (Third Division Award **12367**), this Board is led to the inescapable conclusion that Organization's interpretation of the disputed language of Rule **12(a)** is incorrect and this is insupportable.

Although, given the thrust of the **argumentation** and the specific facts of record, the above posited rationale is certainly a sufficient basis upon which to dispose of this matter, the Board, nonetheless, feels compelled to **comment** upon one final aspect of the case before concluding, and that is **Organization's** contentions regarding the "undue hardship" and the "unhealthy, unsanitary or unsuitable conditions" which allegedly would be caused by **four (4) employees using the same motel room** for clean-up purposes. In this regard, suffice it to say that while it has been determined that Carrier's actions herein did not violate Rule **12(a)**, and while an arrangement in which four (4) **employees share a clean-up room** is not, per se, unsuitable, **unclean**, unhealthy or unsanitary, the fact **remains** that such an arrangement, given the specific facts thereof, could be a violation of said Rule, and the **Organization** in such a situation would be free to file a claim and to **pursue** the matter through the parties' negotiated grievance procedure. Once having taken such action, however, the burden of proof rests with the **Organization** which, thereafter, would have to prove its charge through the use of creditable and probative evidence of sufficient quality and quantity. Obviously, **Organization's** success or lack thereof in such an undertaking is directly related to the sufficiency of the evidence adduced. **The** mere allegation or inference that a particular condition or situation exists without any further offering of proof by the charging party --- such as was the case in the instant dispute --- is completely inadequate and, invariably, will be rejected. **Organization**, by virtue of this award, therefore, is so advised.

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 the Agreement was not violated.

A W A R D

Claim **denied**.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

*A. W. Paulson*

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

