

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23833
Docket Number MW-23453

Herbert Fishgold, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employees**
{ **Joint Texas Division of Fort Worth and Denver Railway Company**
{ **Chicago, Rock Island and Pacific Railroad Company**

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

(1) The **Carrier violated** the Agreement when it allowed the members of **B&B Gang No. 2** a daily meal allowance of either \$3.20 or \$3.50 per day instead of a **daily meal and lodging** allowance of either **\$11.20** or **\$12.25 per day** (**System File B-6-78/JT W-29**).

(2) Messrs. **B. L. Curry, T. W. Harris, T. Madden, M. A. Whisenant, J. K. McDonald, R. Green** and other members of **B&B Gang not listed** or hired during the claim period each be allowed an **additional \$8.00** per day beginning November 1, 1978 and an **additional \$8.75** per day beginning July 1, 1979 because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: **Claimants were** members of traveling **B&B Gang No. 2**, which was headquartered in an outfit car furnished by the Carrier during the period of this claim, beginning November 1, 1978. On November 1, 1978, the effective date of this claim, the claimants' bunk car X306 was stationed at Tomball, Texas, during a work project. Members of **B&B Gang No. 2** were provided with cooking and eating facilities, without a cook, and, pursuant to Rule 33, paragraph 6, each employee received **\$3.20** per day meal allowance. On December 10, 1978, Car X306 was moved to Teague, Texas for a work project and car X306 remained there until February 15, 1979. Thereafter, **B&B Gang No. 2** was assigned car X309, which has been with the gang since that date.

The Organization claims that pursuant to the provisions of Article 33 - Outfit Cars, Lodging, Meals, paragraph 1 requires the Carrier to provide outfit cars meeting certain standards with regard to cooking, eating, lodging and sanitary facilities. Citing the lack of sanitary conditions in Car X306, including the lack of adequate lodging and cooking facilities suitable for habitation or cooking, as well as unsanitary water facilities, the Organization maintains that pursuant to paragraphs 4 and 7 of Article 33, the Carrier must pay a **\$6.40 lodging** allowance effective November 1, 1978, and **\$7.00** effective July 1, 1979, and a **\$4.80 meal allowance** effective November 1, 1978, and **\$5.25** effective July 1, 1979, as amended by Article IX of the October 30, 1973 Mediation Agreement. Such payments are requested by the Organization until such time as the Carrier corrects the cited deficiencies in the outfit car.

The Carrier, on its part, maintains first that it properly compensated claimants under the provisions of Rule 33, paragraph 6, which provides that "if the Company provides cooking and eating facilities . . . but does not furnish and pay . . . necessary cooks, each employe shall be paid a meal allowance of two (\$2.00) per day." This \$2.00 allowance was increased to \$3.20 effective November 1, 1978, and was paid to the claimants, and was further increased to \$3.50 effective July 1, 1979. The Carrier further argues that the claim should be restricted to the period running from November 1, 1978 (the retroactive effective date of the claim) to February 15, 1979, when the B&B Gang was assigned to car X309 in place of car X306.

The issue, thus, is whether claimants are entitled to a daily meal and lodging allowance of either-\$11.20 or \$12.25 per day as provided in Rule 33, paragraphs 4 and 17, or, as alleged by the Carrier, that claimants are properly compensated at \$3.20 a \$3.50 per day as provided in Rule 33, paragraph 6.

Under Rule 33, paragraphs 1 and 2 of the Agreement, Carrier has agreed to provide outfit cars equipped or furnished so as to provide adequate cooking, eating and lodging facilities in sanitary condition. Throughout the handling of the claim on the property, the Organization contended that the outfit car Involved did not meet the provisions demanded of the rule. The record affirmatively shows that Carrier agreed claimants were entitled to a daily meal allowance of \$3.20, effective November 1, 1978, since the cooking and eating facilities were provided without a cook. However, Carrier's only defense on the property was a general denial of any failure to provide adequate and sanitary cooking, eating and lodging facilities. Indeed, the Carrier merely concluded that :

"Based upon the facts, the claims as presented for the named members of Extra Gang No.2 draw no support from existing rules or agreements and are declined in their entirety."

In its submission to the Board, Carrier asserted various other defenses but which the record affirmatively shows were not raised during the handling on the property. It is well established that issues and contentions raised for the first time before the Board will not be considered.

We cannot accept the Carrier's conclusion that claimants' entitlement under the provisions of Rule 33 be limited to the meal allowance under Paragraph 6. In light of the Organization's detailed listing of deficiencies in car X306, we find that Carrier did not provide the necessary cooking, eating and lodging facilities specifically required by Rule 33, paragraphs 4 and 7, which constituted a breach of the Agreement by the Carrier.

Having so concluded, however, we also find, as the Carrier argued, that the payments should be Limited to the period running from November 1, 1978 to February 15, 1979, the time during which the gang used car X306, and after which they were assigned to car X309. In this regard, we note that neither the Organization or claimants made any issue of the conditions of car X309, and therefore, the continuing claims must cease as of February 15, 1979. Accordingly, the claimants are entitled to receive the difference between \$11.20 (the sum of the daily meal and lodging allowances effective November 1, 1978 under Rule 33, paragraphs 4 and 7) and \$3.20 (the sum of the daily meal allowance paid by Carrier under Rule 33, paragraph 6 effective November 1, 1978), or \$8.00, for the period from November 1, 1978 to February 15, 1979.

Inasmuch as the claim has been decided on the merits as set forth above, we find that there is no need to reach the procedural issues raised.

We conclude that claimants are entitled to receive an additional \$8.00 per day in meal and lodging allowances from November 1, 1978 to February 15, 1979.

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 violated.

A W A R D

Claims sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.