

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26458
Docket Number MU-26067

Martin F. **Scheinman**, Referee

(Brotherhood of **Maintenance of Way Employees**
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
(Northern Region)

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

(1) The Agreement was violated when the members of Force ST-162 were not paid the per diem allowance provided for in Agreement Rules 51(d) and 51(e) beginning May 21, 1983 (System File C-M-1661/MG-4105).

(2) Foreman T. E. Strickland, Machine Operator R. Charles and **Trackmen** D. H. **DePree**, S. B. Shepherd, A. McKay and F. R. Hall shall each be allowed the difference between what they should have been allowed at \$20.00 per day [Rules 51(d) and **51(e)**] and what they were allowed as meal and laundry expense (\$8.55 per day) for each day beginning May 21, 1983 and continuing until the camp car assigned to Force ST-162 has been repaired and made suitable for occupancy."

OPINION OF BOARD: Claimants were regularly assigned to Force ST-162, which required them to live away from home in camp cars, hotels, motels, etc.

On April 4, 1983, Claimants were assigned to Force ST-162 and Camp Car 911036 MW. However, the **car** was in very poor condition. Consequently, Carrier paid Claimants twenty dollars' per day from April 4, 1983 to May 20, 1983. At that time, Carrier made certain repairs to the car. As a result, Carrier reduced its payment to \$8.55 per day for meal allowance.

On June 8, 1983, the Organization filed this Claim, **seeking** the full \$20 per day for the Claim dates for each **employee** involved. Carrier rejected the Claim. Thereafter, the case was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Claimants are entitled to the full per diem lodging allowance of \$20. It points out that the camp car furnished was totally inadequate for living purposes. As such, the Organization insists, the camp car was unfit for habitation, thereby requiring the payment of a lodging allowance pursuant to Rule 51(d) of the Agreement.

The Organization notes Carrier's argument that Claimants did not remain at the camp overnight, but elected to return home each day. However, the Organization asserts, Claimants had to seek lodging at the most convenient location, since the car was **uninhabitable**. **Moreover**, the Organization avers, the car was never repaired so as to permit Claimants to live there. For these reasons, the Organization contends the Claim should be sustained.

Carrier, on the other hand, submits that the car was rendered habitable by May 21, 1983. Moreover, it maintains that Rule 51(d) requires payment for... "actual reasonable expense of such lodging." Carrier notes that Claimants chose to return home each evening. Therefore, it reasons that Claimants **incurred** no actual lodging expenses. Accordingly, it asks that the Claim be denied.

After reviewing the record evidence, we are convinced the Claim must fail. This is so for a number of reasons.

First, the Organization has not met its burden of establishing that the car was unfit for habitation. Its Claim letter of July 26, 1983, makes reference to certain deficiencies in the car. Some of them clearly do not render the car uninhabitable (e.g. no cover for shower light). In addition, toilet and shower facilities existed adjacent to the car. Therefore, deficiencies in these elements do not make the car unfit to live in.

In addition Rule 51(d) makes clear that reimbursement is for "actual reasonable expense of such lodging" It is undisputed that Claimants elected to return home each evening. The term "actual" can only mean direct expenses incurred by Claimants (Third **Division** Award No. 26055).

Under these circumstances, Claimants have not demonstrated that the camp car was uninhabitable. Nor have they shown any actual expenses incurred. Accordingly, and for these reasons, the Claim must fail.

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 Employee involved in this dispute are respectively Carrier and Employee 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:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.