

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The Agreement was violated when the Carrier refused to reimburse Machine Operator H. Batiste for actual reasonable meal, lodging and mileage expense he incurred on March 21, 22 and 26, 1984 (System File W-84-62/417-39-A).

(2) The claimant shall be reimbursed for **actual necessary expenses** he incurred (\$161.54) on the claim dates mentioned in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On April 17, 1984, a claim was filed on behalf of **the** Claimant for \$161.54 for personal expenses he incurred while staying at a motel, in lieu of one of the **Carrier's** trailers, while covering an assignment. The original claim stated that:

"(The Claimant) was assigned to trailer No. E.D. 1377 at **Beeville**, Texas and trailer was not in a livable **condition** due to gas leaks, no hot water, water leak, no stove, no mattress and no rest room, therefore, (the Claimant) went to a motel. "

The record shows that the condition of the trailer, at the time the Claimant was assigned to it, apparently was in need of some repairs. The expense claim filed by the Claimant, which is for the dates of March 21, 22 and 26, 1984, shows that he stayed in the Esquire Motel in Beeville, Texas, on those nights. A continuing factual problem with this case, alluded to several times on property by the Carrier, is that the expense form is dated May 20, 1984. Exactly why this is so is never resolved in the record.

According to information presented by the Carrier, repairs were made to the trailer on March 22 and 23, 1984. The lock on the trailer door was repaired on March 22, and some water leaks were repaired on March 23. There is considerable other information presented by the Carrier to show, on the other hand, that the other faults which the Claimant found with the trailer were a question of interpretation. For example, there was a stove and there were mattresses, although the Claimant apparently did not want to sleep on one of the mattresses which was there because it had not been "assigned to him" as the General Chairman explains to the Carrier in its appeal letter dated June 7, 1984. Additional information of record provided by the Carrier under date of May 1, 1984, which is a statement by another employee who had stayed in the trailer prior to the Claimant, shows that it had some of the defects which the Claimant complained of when this employee had stayed there. It is true that the trailer park in which the trailer was located had no rest room but the Claimant, like other employees who had stayed in the trailer, was given a key to the District Maintenance of Way Manager's office where there was a rest room. That office was a short distance from the trailer.

Despite these questions relative to the merits of this case the Board must underline that a close reading of the handling of this claim on property shows that nowhere does the Claimant state what Rule of the Agreement was allegedly violated when he was not paid the claims at bar.

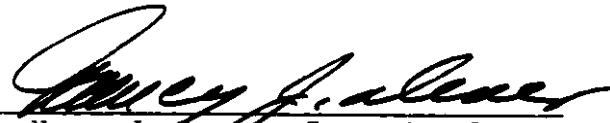
It is well-established precedent that it is the "... employee (who has) the responsibility and burden to cite the rules and agreement language relied upon during the handling (of a claim) on property." Third Division Award 21441. Once that has been done, the burden of proof then lies with the petitioner as moving party (Second Division Awards 5526, 6054; Third Division Awards 15670, 25575). The role of this Board is limited to the interpretation of collective bargaining contracts (Third Division Awards 6695, 21697, *inter alia*). Absent citing of provisions by the moving party it cannot legitimately perform that role. The Organization does cite Article 16 in its Submission to this Board. Such, however, is new material not considered by the parties while handling the case on property, and cannot be considered by the Board in its deliberations in this case. This firmly established doctrine, "... codified by Circular No. 1, has been articulated in numerous Awards of this Division" (Third Division Award 24774; also Third Division Awards 20841, 21463, 22054 inter alia). The claim **must**, therefore, be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1988.