

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf on the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of Signalmen R. Migler, L. Ferrin, J. Stepanian and J. Tomisek, who are headquartered at Riverbranch, for 2 hours pay each day at their respective punitive pay rate, beginning 60 days prior to June 10, 1985 and continuing until the headquarters at Riverbranch is repaired, account of carrier violated the Signalmen's Agreement, particularly, Rule 5-E-2, when it did not provide water, lockers, heat, chairs, desks and toilets at Riverbranch headquarters." Carrier SD-2246

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.

A Claim was filed by the Organization on grounds that the Carrier was in violation of Rule 5(E)(2). It was the position of the Claim that the headquarters at Riverbranch did not meet the requirements of the Rule at bar after it had been vandalized and broken into in February and March of 1985. According to the Claim the employees using this headquarters after that time did not have proper lockers or desk space to store tools, clothes or to do paper work and had to perform paper work at home after hours. (The Claim also stated that employees had to carry drinking water from home, and use lavatory facilities off company property.) Relief requested was one (1) hour pay in the morning and one (1) hour in the evening on continuing basis. The Claim was filed for four Signalmen using Riverbranch as headquarters.

In its denial of the Claim the Carrier argues first of all that the Claim was in procedural default under Rule 4(K)(1)(e) of the Agreement since the vandalism occurred in February of 1985 and the Claim was not filed until June 10, 1985 which is "two months beyond the 60-day time limit stipulated" by this Rule.

The two Rules at bar read as follows, in pertinent part:

"Rule 5(E)(2)

Headquarters shall be provided for all employees and shall be kept in good and sanitary condition. They shall be properly heated and lighted and sufficient air space provided. Drinking water and water suitable for domestic use shall be furnished. They shall be adequately furnished with chairs, desks, and lockers and toilets shall be accessible.

Rule 4(K)(1)(e)

A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the Claimant or Claimants involved thereby shall, under this rule, be fully protected by the filing of one claim based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claims shall be allowed retroactively for more than sixty (60) calendar days prior to the filing thereof. With respect to claims involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient."

In reviewing the record, the Board must conclude that the members of the craft had sufficient grounds, after the vandalism of their headquarters, to believe that Carrier's supervision would either make repairs there and/or change their headquarters to some other location. Since the Carrier did not do this in a timely manner (in fact, it did not rectify the situation until August of that year), the Brotherhood was within its rights, after exercising reasonable patience, in filing a Claim in June of 1985. The objection raised by the Carrier is dismissed.

There is sufficient substantial evidence of record to warrant the conclusion that the Carrier was in violation of Rule 5(E)(2) of the Agreement. That Rule states, as cited in the foregoing, that headquarters shall be "... kept in good and sanitary condition." From February of 1985 until August of 1985 the Brotherhood's headquarters at Riverbranch were not kept in good condition: the commode was unusable; the water was not potable; lockers, desks and chairs could not be used. The company never denies this. Pictures of the interior of the Riverbranch headquarters presented for the Board's consideration clearly show that the facilities were unusable.

The issue at bar in this case is not whether the Carrier was in violation of Rule 5(E)(2), which it clearly was, but whether the Carrier is accountable for this violation. According to the Carrier, it is not accountable in terms of any type of relief "even if the employees have proven their allegations."

The Board must conclude, in this case, that negligence by Carrier's management calls for penalty, otherwise Rule 5(E)(2) would be devoid of meaning. That Rule requires certain, basic working conditions. The Carrier did not provide them for some five months. Arbitral support for damages in a case such as this, which evidence shows to be a Rule violation with impunity, is supported by Third Division Awards 17973, 20311, 23571 all cited by the Organization in their submission. Without reviewing here the line of Awards dealing with the issue of damages, which has been done many times in the past (See Third Division Award 22194, and Labor's Dissent; PLB 3529, Award 3 inter alia) it suffices to cite Third Division Award 20020 which is applicable to this Claim:

"Contracts are not entered into for the purpose of practice in semantics. They seek to establish certain rights of the parties. A violation of a contract, especially if persisted, causes some damages to the injured party..."

That Award dealt with whether relief should be paid to Claimants who were working and who had lost no time nor pay because of a Carrier violation of the Agreement. It, and others such as Third Division Awards 15497, 15888 and 19552, are substantively distinguishable from the instant case. What such Awards do have in common with this case, however, is that they have all concluded that, upon a finding of violation of an Agreement on merits, assessment of some penalty was appropriate. Given the full record before it the Board must conclude that such is also reasonable recourse in the instant case.

In its denial of the Claim the Carrier argues that the Claimant presented no receipts of expenses incurred, nor proof that they worked after hours. It also argues that there was no authorization to work after hours if they did so. While such may be true, it is also true that the conditions present at headquarters at Riverbranch were such that for five months the storage of clothes and tools, accommodations for basis hygenic needs, and a place to do bookwork had to be provided by members of the craft, whereas the Agreement specifically states that such are to be furnished by the Carrier. By providing what the Carrier would not provide the craft was, in a very real sense, subsidizing the Carrier. For this they should be recompensed. It is unclear to the Board how much time and resources of the Claimants this took on a daily basis. Indisputably it took some of both. The Claimant argue that it took two (2) hours daily. For some days that may have been true. On others, it was probably less. Although arbitrary, the Board rules on basis of the record that the Claimants be compensated one (1) hour per day worked for each day involved. Payment shall be for sixty (60) days prior to June 10, 1985, which is the date on which Claim was filed until headquarters conditions were corrected by the Carrier on August 14, 1985.

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Docket No. SG-27472
89-3-86-3-725

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.