

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29876

Docket No. MW-29875

93-3-91-3-244

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

- (1) The Carrier violated the Agreement when it failed to maintain the headquarters at Duquesne, PA in the condition specified by Rule 38 beginning October 30, 1989 (System Docket MW-1029).
- (2) As a consequence of the aforesaid violation, Messrs. R. Devore, G. W. Hoffer, D. Frye, C. Sleva, T. Slater, C. Nowack, R. Beam, C. Nevel, M. Anderonte, J. Johnston and P. V. Smith shall each be allowed two (2) hours of pay for each day on which the violation occurred, on a continuing basis, beginning October 30, 1989."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

This Claim was filed on December 18, 1989, on behalf of eleven Claimants, alleging a violation of Rule 38:

"(a) Headquarters.

Each designated headquarters as provided in these rules will be supplied with lockers, washing and toilet facilities, proper heating, electrical fixtures, table and benches and will be maintained in a clean and sanitary condition.

* * *

(d) Inspection.

The above listed facilities and camp cars will be inspected every year by the proper Company officer and a union representative and a joint report will be made to the Chief Engineer MW as to their findings, and any improper conditions will be corrected."

It was suggested that:

"The toilet facility at Duquesne, Pa. subdivision has been in total disrepair for one year. The room had no lighting or hot water, the portable heater on the middle of the floor, no lighting and the entrance door had a water hose out the door so that any heat coming from the portable heater did not heat the room. The room had the heater in the middle of the room was a tripping hazard."

Based on the record before us, this Board has no doubt that the toilet facility at Duquesne was less than acceptable for some period of time. It is also unrefuted that by October 1989, the facility was in the process of renovation. If the Organization was able to prove that Claimants suffered a loss as the result of this situation (and the record is by no means clear on that point), any remedy they would receive would be limited to a period commencing October 30, 1989. Since Carrier was in the process of complying with Rule 38 by then (by correcting the improper conditions), we cannot conclude that the rule was violated at this time.

A W A R D

Claim denied.

Form 1
Page 3

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.