

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29976
Docket No. MW-28815
93-3-89-3-209

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

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

- (1) The Agreement was violated when the Carrier failed to equip the company owned living quarters at Fields, Oregon with adequate cooling units beginning in August 1987 (Carrier's File MofW 101-80).
- (2) As a consequence of the aforesaid violation:
 - (a) The Carrier shall be required to promptly equip the living quarters at Fields, Oregon with adequate cooling units.
 - (b) Mr. L. L. Schad shall be allowed eight hundred forty dollars (\$840.00) to reimburse him for expenses incurred in connection with nonexistent cooling units.
 - (c) All other employees living in company housing at Fields, Oregon shall be reimbursed for any expenses incurred because of inadequate or nonexistent cooling units."

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.

The Organization filed a claim on behalf of the Claimant, a foreman assigned to Extra Gang 23 headquartered at Fields, Oregon. The Organization contended that the Carrier must reimburse the Claimant and other members of the Gang for expenses incurred when they were forced to seek other lodging than the one provided by the Carrier because of excessive heat and the Carrier's refusal to install cooling units. This, the Organization argues, violated Rule 36 of the Agreement.

The Carrier denied the Claim and after an appeal by the Organization, once again denied it on the basis that the Claimant incurred lodging expenses without obtaining prior authorization from his roadmaster.

The Board has reviewed the record in this case and we find that the Agreement in Rule 36 required that the Carrier provide living quarters that shall be equipped with cooling units.

Rule 36 provides:

"Maintenance. - (a) Living quarters of employees covered by this agreement, when provided by the Company, shall be maintained by the Carrier in a state of good repair and in conformity with sanitary laws. all living quarters shall be ceiled, screened, weatherstripped and provided with sufficient locker space, bedroom space, and air space to meet the requirements established by the laws in the state of California. They shall be equipped with, or facilities shall be provided for fuel, lights, electricity when available, hot and cold water, shower baths, stoves, refrigeration, sanitary facilities and adequate heating and cooling units." (Emphasis added.)

The Organization has presented sufficient proof that during August 1987, the weather in Fields, Oregon was extremely hot and humid and the Carrier did not provide the Claimant with living quarters that were equipped with cooling units. Carrier admits that and merely states that is usually not that hot in Oregon and that other employees did not complain. Hence, we must find that the Carrier was admittedly in violation of the Rule.

The next issue that must be addressed is whether the Claimant took appropriate action in going to a motel with air conditioning

and spending several nights there. Normally, this Board frowns upon self-help methods. However, with this Carrier admittedly in violation of the Rules, the Claimant was facing night after night of unbearable hot and humid sleeping conditions. He apparently complained and received no relief from the Carrier. Consequently, under these limited factual circumstances, this Board finds that the Claimant was justified in attempting to find cool sleeping quarters and staying there. The Carrier is responsible to reimburse him for those accommodations.

However, Claimant submits a claim for more than just the cost of the sleeping quarters. Claimant's claim seeks money for meals and mileage. The Board finds that that element of the request is without a basis in the Rules. There is no Agreement language that includes the Carrier paying for meals and traveling expenses in the event that the Carrier fails to provide cooled living quarters. Therefore, that part of the claim will be denied.

The Claim is sustained in part. The Carrier was in violation of Rule 36 of the Agreement. Claimant shall be reimbursed \$381.00 to cover the 21 days that he was required to stay at Halls Motel. Claimant's request for meals and mileage is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.