

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33900
Docket No. MW-32009
00-3-94-3-374**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Lines (former Denver and Rio Grande
(Western Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outfit cars at Palisade, Colorado to the Extra Gang working at Grand Junction, Colorado, which were not properly equipped with electricity, gas or water beginning April 5, 1993 and thereafter failed and refused to properly compensate said gang under the provisions of Rule 31 (System File D-93-21/MW 93-124 DRG).**
- (2) The claim as presented by General Chairman W. F. Gulliford on June 2, 1993 to Mr. D. Aragon shall be allowed as presented because said claim was not disallowed by Mr. D. Aragon in accordance with Rule 30(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. T. D. Dalpaiz, H. D. Garcia, G. R. Escalante, J. Rojas, R. Prieto, J. R. Soto, R. J. Lucero and B. G. James shall each be made whole for their per them commencing April 5, 1993 and continuing until the violation ceases.**

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 employee 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 were given due notice of hearing thereon.

This claim involves the procedural issue of whether the Carrier officer designated to receive the initial complaint under Rule 30(a) must be the one who responds to it. On its merits it challenges Carrier's compliance with the requirements of Rule 31 with respect to furnishing and maintaining outfit cars provided to Extra Gang 6532 in Grand Junction, Colorado, commencing on April 5, 1993.

The claim was filed by the General Chairman on June 2, 1993 with Mr. David Aragon, Carrier's officer authorized to receive complaints under the Agreement, alleging, among other things, that the outfit cars in question were not hooked up to electricity, gas and water, and requesting \$29.00 per diem for each named Extra Gang member.

The July 27, 1993 denial was sent to the General Chairman from S. E. Muntz, Carrier's Division Engineer, setting forth in detail the contents of Roadmaster Alire's statement (later furnished to the Organization) that the outfit cars were hooked up to water and lights, had been occupied by five men in another gang the previous week without complaint, that no complaints were received until Claimant Dalpaiz stated in May, that the cars were dirty, needed a light bulb replaced and the screen doors were no good. Carrier stated that a specific individual checked out and corrected these complaints immediately. Carrier noted that although Claimants did not live in these cars as they were from the area, they had been hooked up as required by the Agreement. Carrier also took issue with the inclusion of Claimant Soto at all and Claimant James prior to May 3, 1993.

The Organization's August 16, 1993 reply alleged that the wrong Carrier officer had responded to the claim, requiring that it be paid in full. The Organization also attached two documents, an undated typewritten list of complaints with the two outfit cars, and written notes concerning when Extra Gang 6532 began, who it was composed of, when it started, and when in May the Roadmaster was notified of the lack of gas and when the list of defects was given to Carrier. The author was not identified.

Carrier responded on October 15, 1993 indicating its position that the designated officer need not be the only one to reply to a claim and that the Organization had not proven its allegations. The matter was conferenced on March 16, 1994, and Carrier's denial issued on April 8, 1994, attaching a copy of Roadmaster Alire's written statement previously referred to in its July denial.

The Organization argues that under Rule 30(a) Carrier was obligated to have the designated Carrier officer deny the initial letter of claim, citing Third Division Awards 16508, 17696, 18002, 21297, 21899, 22710, 22800, 23943, 25091, 25092, 25093, 26572, and its failure to do so renders this matter procedurally flawed. With respect to the merits, the Organization asserts that Carrier's failure to maintain suitable camp cars as required by Rule 31 requires payment of the per diem fee, relying on Special Board of Adjustment No. 279, Award 3; Third Division Awards 7649, 23833, 29976.

Carrier contends that the matter is not procedurally flawed since the Board has held that rules akin to Rule 30(a) do not require that any particular officer of Carrier respond to the claim, citing Third Division Awards 29937 and 27590. On the merits, Carrier argues that the Organization has failed to sustain its burden of proof since, at best, there exists an irreconcilable dispute of fact concerning the condition of the outfit cars and their repair, relying on Third Division Awards 25468 and 22428. It notes that not all Claimants are entitled to a remedy in any case based upon the lack of proof that they were affected.

In resolving the procedural issue raised by the Organization, the following language of Rule 30(a), Claims and Grievances, is relevant:

“Presented

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Company authorized to receive same within sixty (60) days from the date of

the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall within sixty (60) calendar days from the date same is filed notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified the claim or grievance shall be allowed as presented”

This issue has been decided by the Board in Third Division Award 27590, which reviewed many of the cases cited by the Organization herein and the conflict in the authority prior to 1988, and concluded that:

“Article V Rules require that claims are to be filed with a specifically designated officer and that they are to be answered by the Carrier. If it was intended that the designated officer and only the designated officer be the one that could properly respond then it would have been a simple matter to state this result in the Rule . . .

* * *

. . . Unaltered Article V Time Limit Rules cannot, in our judgment, be read so as to replace “Carrier” with “officer” in the second sentence of paragraph (a)”

This case was upheld in Third Division Award 29937, and its rationale is equally applicable herein. Thus, we find that the claim was properly responded to by Carrier and that its processing was not procedurally flawed.

A careful review of the record convinces the Board that the Organization has failed to meet its burden of proving that a violation of Rule 31 dealing with Outfit cars has taken place. While that rule provides that outfit cars shall be maintained in good mechanical repair and in a clean and sanitary condition, and shall contain hard surface floors, be wired for electricity, screened, equipped with oil or gas stoves, etc., the evidence proffered by the Organization amounts to a list of defects and notes indicating that such list was given to the Roadmaster in late May, 1993. These documents are undated and unsigned. On the other hand, Roadmaster Alire's typewritten statement dated June 22, 1993 sets forth the fact that water, gas and electricity were hooked up in

these cars, that no complaints were received from the workers who had been living in the cars until April 3, 1993 or from Claimants until mid-May, and that the few minor repairs required were performed shortly after this notice was received. Even were we to consider the documentary evidence of the Organization to equal the Carrier's in force, at best, this Board is faced with an irreconcilable dispute of fact, which we are unable to resolve. Under such circumstances, we have no choice but to dismiss the claim. Third Division Awards 25468, 23834, 22428, 20053.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of January, 2000.