

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38097
Docket No. SG-37863
07-3-03-3-241

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of Signal Maintainers J. A. Willard, Gang 3796; W. A. Gibbons, Gang 3756; P. L. Flowers Jr., Gang 3753 and Assistant Signalman M. Davis, Gang 3796, for time and one-half rate for all time worked without a proper headquarters facility beginning on January 26, 2002; additionally, any other employees who, through the exercise of seniority occupy the above stated positions, be compensated the time and one-half rate for all time worked without a proper headquarters facility. Also, the Claimants shall be compensated for all meals and expenses incurred while working without a proper headquarters facility; account Carrier violated the current Signalmen’s Agreement, particularly Rules 12, 13, 32, 33 and Implementing Agreement dated January 31, 2000, when on January 26, 2002, it replaced the old headquarters facility with a mobile office trailer and then refused to provide required toilet and bathing facilities. This claim is continuing until the violation is resolved. Carrier’s File No. 1316617. General Chairman’s File No. N12 13 32-256. BRS File Case No. 12591-UP.”

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.

The instant dispute involves the Carrier's application and adherence to Rule 32 of the Agreement and Rule 57 as contained within Section 6 of the parties' January 31, 2000 Implementing Agreement concerning the commuter operations territory of the former Chicago and Northwestern Railroad.

Rule 32 – SIGNAL MAINTAINERS HEADQUARTERS reads, in relevant part, as follows:

“Signal maintainer headquarters will be at a tool house or shop area which will be provided with suitable lockers and other facilities required to properly perform his duties and will be kept in good and sanitary condition. Reasonable washing and toilet facilities will be made available. Light and heating facilities will be provided on request and when considered necessary.”

Rule 57 – Headquarters provides:

“Headquarters shall be properly heated and lighted and be kept in good condition. They shall be furnished with chairs, desks, lockers, toilets and bathing facilities. Adequate parking shall be furnished. Drinking water shall be furnished.”

The Organization filed the instant claim on or about March 19, 2002. It alleged that the Carrier violated the Agreement when, as of January 26, 2002, it replaced the employees' existing headquarters with a mobile office trailer without the required toilet and washing facilities. Specifically, the Organization objected to the fact that the Carrier had failed to provide the Claimants with the facilities required under Rule 32 of the Agreement and the January 31, 2000 Implementing Agreement. The Carrier denied the claim on May 13, 2002. It insisted that neither Agreement provision had been violated and that the toilet and washing facilities were sufficient for the Claimants. The Carrier included a statement from Manager Signal Maintenance R. J. Lane in which he noted that a facility at that time was being "... refurbished and remodeled complete with a shower facility" and was not far from the office trailer. Specifically, the Carrier objected to the Organization's filing of a claim while it was "... in fact remodeling the toilet, sink and providing shower facilities in the Control Tower that is 120 feet from the new [gang] trailer and has a lockable door."

The denial was appealed on July 8, 2002. That appeal was denied on September 3, 2002. In its denial the Carrier reaffirmed its earlier position and added that there was no Agreement support for the remedy sought by the Organization.

The primary source of the Organization's claim was, as can be seen from the record, a temporary dislocation of the facilities available to the Gangs in question. It is apparent from Rule 32 of the Agreement and Rule 57 which is referenced in the Implementing Agreement (quoted above) that the Carrier is obliged to provide Signal Maintainers with headquarters that have adequate toilet and washing facilities. As can be seen from the text of those Rules, the parties used the words "will be made available" and "shall be furnished" (Emphasis added). However, in Rule 32, the Parties also included the word "reasonable." At the heart of the present dispute is the Parties' dispute over what constitutes a "reasonable" provision of the required facilities.

The Organization contends that the Carrier did not provide "reasonably" accessible facilities, as provided in the above-referenced Agreement provisions. Evidence regarding that contention is unclear on this record and cannot be viewed as probative of the Organization's position on this point. What is clear, however, is

the uncontroverted statement contained in the Carrier's May 13, 2002 letter of denial that it was at that time completing a facility within approximately 121 feet of the Signal Maintainers' headquarters that would contain all mandated amenities. There is no evidence in this record to suggest that the distance to the renewed facility was not a reasonable one.

In light of the fact that the Carrier met the requirements of not only the Agreement, but also the Implementing Agreement regarding toilet and washing facilities while the claim was in the early stages of processing, that portion of the Organization's claim is rendered moot. Moreover, the Organization presented no evidence to support its position that the Claimants are due any measure of compensation for their alleged inconvenience while the Carrier completed the facility in question. Accordingly, the instant claim must be denied in its entirety.

AWARD

Claim denied.

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 21st day of February 2007.