

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. C. E. Amend, Helper, Gas Shovel SP-0-31, be reimbursed for expenses incurred in amount of \$32.10 for the period June 17 to 30, 1939, because of failure of the Carrier to provide facilities in outfit cars, in accordance with Rules 65 and 66 of Agreement effective September 1, 1926.

EMPLOYEES' STATEMENT OF FACTS: June 17, 1939, Mr. Amend reported for duty to fill position of Helper, Gas Shovel SP-0-31, outfit cars located near Yuma, Arizona.

Outfit Car SP-MW-3748 was furnished for living quarters. It was a wooden, underframe car. Floors were rough and badly scarred and in such condition that they could not be swept clean. No bathing facilities were provided, nor were water tanks or receptacles furnished so that an adequate supply of water, suitable for domestic purposes could be stored. A portion, but not all of the windows were screened. The roof of the car was in poor condition, roofing paper having been blown off in many places, leaving cracks and holes which permitted sand or rain to freely enter the car. The car was equipped with lamps, stove and steel bunk with springs and was ceiled.

Because of unsanitary condition of the car and the absence of facilities and equipment, such as required by the rules, the car was not suitable to live in, consequently the circumstances compelled Mr. Amend to obtain board and lodging elsewhere. He requested reimbursement from the Carrier of \$32.10, to cover expenses incurred, but payment was declined.

The Agreement effective September 1st, 1926, copies of which are on file with this Board, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Claim here involved is based upon the Carrier's violation of Rules 65 and 66, which rules we quote for your ready reference:

"Rule 65—Outfit cars shall be maintained in good and sanitary condition. All regular outfit cars must be ceiled and screened (except tool and material cars) and will be equipped with springs consistent with safety and character of the car and comfort of the employees.

It shall be the duty of the foreman to see that the cars are kept clean. Regular outfit cars to be equipped by the Company with steel bunks with springs, stoves and lamps."

would not live in car SPMW 3748 because the car was not equipped with a shower and that he would not occupy the car until a shower was installed. The claimant did not complain to the acting roadmaster about any other feature of said car.

The carrier submits that the above-mentioned objection constituted the claimant's entire basis for not residing in car SPMW 3748.

That the said objection was not a valid one has already been established. The claimant did not have the right to require the carrier to install a shower in car SPMW 3748, and the carrier fully complied with its obligation under the current agreement with regard to bathing facilities when it furnished a shower in the tool car.

The claimant undertaking to live away from car SPMW 3748 solely because a shower was not installed in that car was without right to claim that the carrier should pay his expenses while residing away from said car.

The carrier submits that it has conclusively established that the claim in this docket is without merit and should be denied.

CONCLUSION

The carrier respectfully submits that it is incumbent upon the Board to dismiss the claim in this docket for want of jurisdiction but in the event the Board does assume jurisdiction then the carrier respectfully submits that the claim being entirely without merit it is incumbent upon the Board to deny it.

OPINION OF BOARD: The claim as filed was predicated on a violation of Rules 65 and 66, which provide:

"Rule 65—Outfit cars shall be maintained in good and sanitary condition. All regular outfit cars must be ceiled and screened (except tool and material cars) and will be equipped with springs consistent with safety and character of the car and comfort of the employees.

"It shall be the duty of the foreman to see that the cars are kept clean. Regular outfit cars to be equipped by the Company with steel bunks with springs, stoves and lamps."

"Rule 66—The railroad will see to it that an adequate supply of water, suitable for domestic purposes, is made available to its employees living in its buildings, camps, and outfit cars. Where it must be transported and stored in receptacles, they shall be well adapted for the purpose."

An examination of the record leads us to believe that, in the beginning, claimant's chief grievance was that there was not an adequate water supply nor a shower bath in the car. It is clear, however, that there was a shower bath and an adequate supply of water for domestic use available to claimant in adjacent cars.

The evidence is in dispute as to the condition of the car. It was old but there is no evidence to justify the conclusion that it was in an unsanitary condition. Whether, in its maintenance, the carrier complied to the letter with the requirements of Rule 65 we are unable to say from the record as made. The burden was on the claimant to establish violation of the rule; and we think he failed to sustain the burden of proof.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1943.