

Award No. 5173

Docket No. TE-5011

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul & Pacific Railroad Company,

(1) That the Carrier violated the provisions of Rule 19-(b) of the Telegraphers' agreement when it failed and/or refused to maintain the living quarters for the agent-telegrapher at Java, South Dakota, in a habitable and sanitary condition; and,

(2) That E. C. Weatherly, the regularly assigned agent-telegrapher at Java, South Dakota, shall be reimbursed the cost of material and labor expended by him, amounting to \$487.49, necessary to place the living quarters at Java in a habitable and sanitary condition, and

(3) That E. C. Weatherly, the regularly assigned agent-telegrapher at Java, South Dakota, shall be paid \$32.00 for living expense incurred April 1, 1947, to April 16, 1947, inclusive, when he was required to live away from home by virtue of the fact that the said living quarters were not maintained by the Carrier in a habitable and sanitary condition.

EMPLOYES' STATEMENT OF FACTS: E. C. Weatherly is the Claimant in this case. Java, South Dakota, is the station involved.

Java, South Dakota, is a small one-man station located on the Hastings and Dakota Division of the Chicago, Milwaukee, St. Paul & Pacific Railroad approximately seventy miles west of Aberdeen, South Dakota.

Bulletin No. 1, dated January 1, 1947, advertised for bids a vacancy in the position of Agent-Telegrapher at Java.

E. C. Weatherly bid for and was awarded the position.

The Railroad Company provides rooms in the station building at Java as living quarters for the Agent-Telegrapher and his family.

There were no water facilities on the property. Water for family use, as well as for use of section crews, was obtained from private hydrants some distance from the station.

In the interim, between the date of assignment and date of his transfer to the newly acquired position, Weatherly made an inspection of the living

pany, spent \$238.79 for material, which was used only for alterations and improvements, and \$248.70 for labor. If Mr. Weatherly's claim were sustained, it would have the effect of indicating the agent could use his own judgment, not only as to repairs which he considered necessary in living quarters of station buildings, but also as to alterations and improvements which he wished to make in those living quarters and could incur expense, in the amount of several hundred dollars or in any amount for such work, for the railroad company. If Mr. Weatherly could do so, then other agents who have the benefit of living quarters in station buildings could do likewise, which would create a situation which could not be tolerated and would mean that the practice of furnishing living quarters could not be continued.

The Carrier asserts that the claim of employee Weatherly—that he be reimbursed to the extent of \$487.49 for expenditures which he made for labor and material, and for an additional \$32.00 for living expenses—has no support under the schedule rules and respectfully asks that the claim be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 1, 1947, claimant bid in the position of Agent-Telegrapher at Java, South Dakota, it being a small one-man station. The Carrier provided living quarters at this point for the agent-telegrapher and his family. Claimant made an inspection of the living quarters before transferring to Java. He found the living quarters very dirty, the roof leaky, and the place in a badly rundown condition. Claimant asked the Carrier to fix the place which it did not do. Claimant fixed up the place after gaining approval from the Carrier, the terms of the approval being in dispute. The applicable rule provides:

“Rule 19—Living Quarters

(b) The Carrier shall maintain any living quarters that it furnishes in a habitable and sanitary condition; employes shall cooperate in keeping same clean and orderly. Insanitary (sic) conditions at a station shall be corrected upon being reported to the proper officer of the Carrier.”

The Carrier urges at the outset that it was under no obligation to provide living quarters for claimant under the foregoing rules. The fact remains that it did furnish living quarters and thereby obligated itself under Rule 19(b) to keep them in a habitable and sanitary condition. The record indicates that the Carrier failed in its obligations under Rule 19, although some minor roof repairs were made by its B&B forces. The Carrier excuses its dilatory attitude by stating that B&B forces were occupied in programmed work which they could not abandon at the time.

In order to make the quarters livable, claimant demanded that they be made habitable and sanitary. He also requested that certain alterations be made which was in excess of Carrier's agreement to make them habitable and sanitary. The Carrier refused this demand although it authorized claimant to make the alterations at his own expense if he desired. The situation was understood by claimant as is shown by his letter of February 6, 1947, wherein he said:

“I have your letter of anything for my own personal benefit will have to be paid by me. But these rooms the company has to put in living condition. I know the B&B is way back on their work and I am willing to do this work or hire it done at my own expense if the company will furnish the material. I think that is fair.”

It goes almost without saying that an employe of a carrier cannot bind or obligate the carrier as was here attempted. Ordinarily express authority is required for an employe to make commitments which the Carrier must assume. In the case before us, we think the Carrier should be required to

pay what was reasonably necessary to put the living quarters in a habitable and sanitary condition, and nothing more. The cost of repairing the roof and floors, and the cleaning and painting of the walls, was authorized by the Carrier. The cost of new partitions, the lowering of ceilings, the purchase and installing of doors, windows and casings, the purchase and installation of Celotex and Sheetrock, was not authorized by this Carrier. It was plainly assumed by claimant in writing. The claim for living expenses is not supported by any rule of the Agreement.

There is evidence in the record that the Carrier furnished the materials for the repairing of the roof and floors. The claim lists no item of expense for such materials. The labor in connection with making these repairs is not separated from that required in making alterations. We cannot determine such amount, if any, from the record. Other items of the claim are readily separable. We are required, therefore, to remand the case for joint handling on the property with instructions within 60 days from the date of this award, to determine the amount due the claimant in accordance with the findings and holdings of this Opinion.

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 Employees involved in this dispute are respectively Carrier and Employees 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 the Agreement was violated.

AWARD

Claim remanded per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 21st day of December, 1950.