Award No. 5186
Docket No. SG-5086

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim of the Pennsylvania System Committee, Brotherhood of Railroad Signalmen of America, that the Carrier has violated, and is continuing to violate, Article 8, Section 10, of the Telegraph and Signal Department Agreement when it fails to provide the Telegraph and Signal Department employes, employed on the Chicago Terminal Division, Pennsylvania Railroad, with the facilities and equipment provided for in this rule at their respective headquarters.

(b) Claim that all Telegraph and Signal Maintainers who are not provided with these facilities be allowed one hour's pay each day from June 18, 1945, until provided with these facilities and equipment on account of having to provide some of these themselves.

EMPLOYES' STATEMENT OF FACTS: The Telegraph and Signal Maintainers employed on the Chicago Terminal Division, Pennsylvania Railroad, have been endeavoring for some years to have the facilities at their headquarters improved to conform with the provisions of Article 2, Section 10, of the Telegraph and Signal Department Agreement.

Article 8, Section 10, definitely provides that headquarters will be properly heated and lighted and sufficient air space provided. Drinking water and water suitable for domestic use shall be furnished, and the headquarters shall be adequately furnished with chairs, desks and lockers, and toilet facilities shall be accessible.

The Carrier has failed to provide all these facilities, which has caused these employes to provide them themselves.

There is an agreement between the parties involved in this dispute bearing effective date of June 1, 1943. We understand there is a copy of this agreement on file with the Board and request is made that it be made a part of the record on this dispute.

This claim has been handled in the usual manner on the property without reaching a satisfactory settlement.

POSITION OF EMPLOYES: For the convenience of the Board, we quote Section 10, of Article 8, of the agreement dated June 1, 1943:

"Headquarters shall be provided for all employes and shall be kept in good sanitary condition. They shall be properly heated and lighted and sufficient air space provided. Drinking water and

It is submitted, therefore, that the Employes' contention in this respect does not lend support to the claims for additional compensation.

As a matter of information, the Carrier wishes to state that the facilities at three of the headquarters locations here involved have been made to comply with the requirements of Article 8, Section 10. The facilities were provided at Liverpool Tower, Clarke Junction Tower, and Maynard, effective as follows:

Liverpool Tower	—	2-25-49
Clarke Junction Tower	—	6-30-49
Maynard	—	4-19-49

The work incident to the erecting of facilities at the other locations is being progressed and will be completed as soon as possible. The Carrier repeats that it has not deliberately, or maliciously evaded complying with the provisions of Article 8, Section 10 of the Schedule Agreement, and as the Employes were advised throughout the handling of the claims on the property, it was the Carrier's intent to furnish the facilities that were lacking at the locations in question.

In any event, as hereinbefore stated, Article 8, Section 10 contains no requirement for the payment of additional or penalty compensation in circumstances such as are present here.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that Article 8, Section 10 does not contemplate nor provide for payment of compensation such as is claimed in this case. The Carrier has shown that no other rule in the applicable Agreement supports the Claimant's contention that they are entitled to the additional compensation of an hour's pay for each day from June 18, 1945 until certain requirements of Article 8, Section 10 are fully complied with.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

(Exhibits not reproduced).

OPINION OF BOARD: Agreement of June 1, 1943, between the parties contains the following provision, Article 8, Section 10:

"Headquarters shall be provided for all employes and shall be kept in good and sanitary condition. They shall be properly heated and lighted and sufficient air space provided. Drinking water and water suitable for domestic use shall be furnished. They shall be

adequately furnished with chairs, desks and lockers, and toilets shall be accessible."

On or about June 18, 1945, the Organization brought to the Carrier's attention its failure to comply with the above provision of the Agreement. In response to this, and about July 18, 1945, a joint committee reported on the desirable rehabilitation work remaining to be performed under the Agreement. Part of this work was performed, but by July 30, 1947, the rehabilitation work had not been completed at a number of headquarters (the Carrier designates five such places, the Petitioner claims seven). On that date the Superintendent and Local Chairman entered into a joint submission, listing five headquarters as uncompleted and claiming one hour's pay for each Maintainer for each day until the facilities provided in the Agreement are installed. This claim was denied on the property through the several stages and is now before this Board. In the meantime, the Carrier completed the rehabilitation of three headquarters, leaving at this time four (according to Petitioner, two according to Carrier) headquarters unsupplied with the facilities and equipment required under Article 8, Section 10 of the Agreement.

The Petitioner premises its claim for one hour's pay per day on Article 2, Section 8 (c) which reads as follows:

> "Subject to the provisions of Sections 7 and 9 of this Article, and except as provided in paragraph (e) of this Section (8), an hourly rated employe performing service which permits him to leave and return to his headquarters the same day shall be paid at the straight time rate for all time traveling or waiting outside of his assigned tour of duty."

The Petitioner backs its contention on the theory that the Carrier was bound by the Agreement to furnish certain facilities (principally water) at Maintainers' headquarters, that it had failed in certain instances to perform, that by reason of such failure the employes were required to carry water to their headquarters, that they were thus performing work which benefitted the Carrier, and that by performing such work while going to and from their headquarters, they were entitled to compensation under the provisions of Article 2, Section 8 (c).

The position of the Carrier is that, while it has not fully performed its obligation under Article 8, Section 10, the Agreement provides no penalty for such failure to perform and the Petitioner does not show that it has been damaged.

The Carrier has admitted that it has not complied with Article 8, Section 10 of the Agreement and the question now before the Board is whether the Petitioner may recover any penalty or damages for nonperformance.

It must be conceded that the Agreement does not contain a specific provision for a penalty in case of nonperformance of the obligation imposed by Article 8, Section 10. It is also well established by the precedents of previous awards that the Board will not impose a penalty where none has been specified in the Agreement. This is a sound doctrine. But it does not necessarily follow that where no penalty has been provided, this Board is helpless and without authority to make an award which will tend to enforce compliance with the terms of the contract.

It is a well established principle that if a party to an Agreement fails to perform that which he has undertaken to perform and such nonperformance results in a loss to the other contracting party, then the aggrieved may require the nonperforming party to compensate him for the loss suffered by reason of the breach. By the terms of the Railway Labor Act, this Board is authorized to consider disputes arising out of grievances or interpretations of Agreements between the parties and to make an award. The Board would fail in its objective of settling disputes if there is not implied in the broad purposes of the Act the authority of the Board to

enforce its awards by an appropriate finding of damages, if any exist, and directing the payment thereof.

The chief complaint of the Petitioner is that certain unnamed employes were required to carry water to their headquarters and that such service was performed prior to going on duty on their regular assignment. No claim is made, and there is no evidence in the submission, that the Petitioner furnished its own chairs, desks, lockers and toilet facilities. As these facilities were by Article 8, Section 10, to be furnished by the Carrier, the employes were damaged to the extent that they supplied such facilities, or a substitute, by furnishing their time, labor and material. The Petitioner claims pay for one hour for each Maintainer at each headquarters that lacked the facilities provided in Article 8, Section 10. However, there is no provision of the contract that would authorize the arbitrary allowance of one hour's pay for such service; nor does the submission contain evidence of the actual time consumed by the particular employes who did perform this service before and after their regular working hours. But it was to this extent that they were damaged. It is probable that these facts can be ascertained on the property.

Article 8, Section 10 was incorporated into the Agreement of June 1, 1943. At that time labor and materials were under rigid control. However, by July 30, 1947, the date of the joint submission of the Superintendent and Local Chairman, the control of material and labor had been relaxed, and it is reasonable to presume that the Carrier, by due diligence, could have performed its contract by such date, and that thereafter it breached its Agreement by failing to provide the facilities enumerated in Article 8, Section 10 for the stations identified in the joint submission of that date.

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;

That the Carrier on and after July 30, 1947, failed to perform its obligation under Article 8, Section 10 of the Agreement of June 1, 1943; that it continues to violate said Section with respect to certain Maintainer headquarters; that on and after July 30, 1947, certain unnamed employes furnished for their headquarters, by their own labor and expense, water and other facilities required under the Agreement of June 1, 1943, to be furnished by the Carrier; that by reason of the Carrier's breach of the Agreement the specific employes who furnished water and other facilities for the headquarters specified in the joint submission of July 30, 1947, are entitled to recover compensation from the Carrier at their pro rata rates on the minute basis for such services so performed and until the facilities were or shall be installed; that this matter be referred to the parties on the property to determine the employes actually affected and the extent of their time devoted before and after their assigned hours in supplying facilities, if any, enumerated in Article 8, Section 10 for their respective headquarters.

AWARD

Claim (a) sustained; claim (b) sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.