Award No. 12827
Docket No. SG-12081

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company (Pacific Lines) violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958, including revisions), particularly Rule 65.

(b) The following Signal Department employes who were employed on Signal Gang Nos. 1 and 2, Rio Grande Division, and who were quartered in camp cars furnished as home station and designated as such, and all Signal Department employes who are subsequently assigned to either of these two gangs while this claim is continuing, and who are quartered in the above-mentioned camp cars, be paid an expense allowance of two dollars ($2.00) per day for each calendar day that they remain assigned to either of these two gangs from February 16, 1959, until such time as cooking and eating facilities prescribed in Rule 65 are provided for use of these employes in preparing their own meals:

Signal Gang No. 1

E. C. Barney
O. D. Buchanan
W. W. Kyler
F. W. Lopez
E. L. Taylor
C. G. Kaufman
E. H. Langfitt
M. R. Crump

Signal Gang No. 2

Rodney L. Amick
Jessie W. Mowell
Jessie M. Post
R. D. Hanson
B. F. Aycock
John F. Donovan

EMPLOYES' STATEMENT OF FACTS: The Carrier furnishes outfit cars or trailers as the home station and living quarters of various signal

even those who boarded with the gang at the extremely moderate cost of $3.17 per day could not have provided themselves with adequate food at a price that would have netted them the $2 per day saving claimed. In the absence of any evidence whatever tending to substantiate the alleged $2 per day loss on behalf of claimants, it is a necessary conclusion that this figure is speculative and conjectural, and as such would not be a proper element of damage even if Rule 65 required carrier to furnish members of a boarding outfit with batching facilities.

IV.

CONCLUSION

The claim is not supported by the current agreement and carrier respectfully requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The principal issue to be resolved in this case is whether the Carrier has complied fully with the provisions of the second paragraph of Rule 65, which provides that "Kitchen and dining cars shall be furnished and equipped with stoves, utensils and dishes, in proportion to the number of men to be accommodated."

In this case, an independent Commissary Company cooked all the meals for the claimants in dining cars, which were adequately furnished and equipped with stoves, utensils and dishes, in proportion to the number of men to be accommodated. The petitioners, however, contend that by turning over these facilities to the Commissary Company, the Carrier was in violation of that portion of the Agreement quoted above, further that to be in compliance with the Agreement, they should be permitted to use the cooking facilities themselves, in order to cook their own individual meals.

The rule upon which the petitioners rely is silent as to the type of facilities contemplated, whether boarding, as in this case, or batching, or both. It simply and unequivocably states that "kitchen and dining cars shall be furnished and equipped with stoves, utensils and dishes, in proportion to the number of men to be accommodated." There is no question that the above was furnished, but the use of the facilities is in question.

A reading of this rule does not make it clear whether or not it was in the contemplation of both parties that boarding or batching or both would satisfy the rule. We, therefore, are forced to look beyond the naked rule itself to the past practices of the opposing factions. In so doing, we find that the rule for over a period of many years has been satisfied by the Carrier doing as it did in the instant case, provide a boarding facility, rather than a batching facility, and, indeed, that it was never required to provide both at the same time. The rule had been subjected to this interpretation for many years prior to a re-adoption of the same language in the last collective bargaining agreement, and the same practice has continued since its re-adoption. It is a fundamental principle of contract law that "when a Contract is executed and existing or past practices are not specifically abrogated by its terms, those practices are just as valid and enforceable as if authorized by the Agreement." We, therefore, must deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 6th day of August 1964.

DISSENT TO AWARD NO. 12827, DOCKET SG-12081

Award No. 12827 is a palpable error and should be so recognized.

It cannot be denied that the agreement before us, i.e., the "Agreement between Southern Pacific Company (Pacific Lines) and the Employes of the Signal Department", "* * * governs the * * * working conditions of all employes covered" thereby. Therefore, to furnish what is required by the agreement, but, at the option of the Carrier, deny the employes access thereto except through and for the benefit of a third party at the expense and to the detriment of the employes, leaves the pertinent part of Rule 65 in a vacuum, and is violative of its terms.

Award 12827 is another example of the Majority (Carrier Members and Referee) allowing what they find to have been a practice to take precedent over a clear and unambiguous agreement. (See our Dissent to Award No. 12644 with the same Referee.)

Award No. 12827 is clearly in error; therefore, I dissent.

W. W. Altus
Labor Member