

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the intent of Rule 78 of the Signalmen's Agreement when it changed the working conditions of the signal employees assigned with headquarters in camp cars when it ceased providing boarding facilities and cooks on September 25, 1959.

(b) L. C. Zinsmeister, L. M. Taylor, R. A. Cordwell, L. R. Beer, B. L. Daniels, Tom Morton, Glen Barnett, Homer Goza (Cook), and all other employees adversely affected thereby be made whole for any and all financial loss incurred as a result of the Carrier's improper action, and a minimum of \$3.50 per day per employee for the payment of meals be allowed from September 28, 1959, until such time as cooking and boarding facilities are restored.
[Carrier's File: L-130-174]

EMPLOYEES' STATEMENT OF FACTS: For the past thirty years or more, Signal Gangs on this Carrier assigned to camp cars were afforded boarding privileges and the services of a cook to prepare all meals. The camp car outfits assigned to each Signal Gang included boarding cars which were equipped by the Carrier with cooking utensils, dishes, stoves, refrigerators, sinks, silverware, etc. The Carrier also assigned a cook to each Signal Gang and boarding car, who prepared all of the meals for the other members of the Signal Gang. The wages of the cook in each instance were paid by the Carrier and the cost of the meals was shared proportionately by the members of the Signal Gang.

On September 17, 1959, Mr. H. Jensen, Signal Engineer, issued a bulletin abolishing 5 positions in Signal Gang No. 5, 1 position in Signal Gang No. 9 and 1 position in Signal Gang No. 8. The employee assigned to the position abolished in Signal Gang No. 8 was Mr. H. R. Goza, the cook, who was assigned by the Carrier to prepare the meals for Signal Gang No. 8.

OPINION OF BOARD: For more than 30 years, cooks were assigned to Signal Gangs to prepare meals for the members of the gangs. On September 25, 1959, Carrier suspended the practice and furloughed the cook of Signal Gang No. 8 without consulting the Organization. The Organization claims this to be a violation of the intent of Rule 78 and asks that all the employees affected, including the cook, be made whole for any financial loss they may have suffered or will suffer until cooking and boarding facilities are restored.

Rule 78 provides:

"CAMP CARS - SANITARY CONDITION.

Camp cars will be maintained in a sanitary condition and equipped suitable to the needs and comfort of the employees."

The Organization based its claim on the "intent" of Rule 78 because the Rule does not explicitly require the Carrier to provide a cook for a camp car. In the absence of clear cut language, the Organization urged that the Rule be "interpreted" so as to require that cooks be provided.

The long practice of using cooks, which we take to be a fact because the Carrier did not deny it, was pressed by the Organization as having relevance in the interpretation of the Rule.

Rules do not require interpretation unless they are ambiguous. The only phrase in the Rule which may be said to be ambiguous is: "equipped suitable to the needs", but it would require a strange and strained interpretation to say that it covered the providing of cooks.

The word "equipped" is generally used in connection with inanimate objects, not human beings. We have heretofore said that, in interpreting contracts, words should be understood as used in their normal and popular sense, unless otherwise indicated. Award 11485 (Hall.)

Rule 79 requires the Carrier to provide fuel and water to meet the needs and comfort of the employees. The fact that the parties felt it necessary to write such a rule underscores the limited applicability of Rule 78, for if Rule 78 were as broadly intended as the Organization urges, it would cover the provision of water and fuel as well as the furnishing of a cook.

Part of the claim relates to the lay-off of the cook himself. There is nothing in the Scope Rule which grants the Organization the right to represent the cook. The record indicates that the Organization at one time requested the right to represent cooks. We have held that such a request is an admission that the Organization does not then have such a right. Award 11580 (Hall.)

The Organization argued that the failure of the Carrier to refute its allegation that Rule 78 has been interpreted to include the furnishing of cooks should be decisive on this issue. The allegation is of an opinion not a fact. The failure to refute an opinion does not vest that opinion with authority. It must still stand upon its own validity and must be persuasive regardless of whether or not the opposition refutes it.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1964.