

Award No. 13019

Docket No. SG-11856

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) The Carrier violates and continues to violate the Signalmen's Agreement when it fails to provide drinking water and toilet facilities at the Maintainer's headquarters at Athens, Ohio.

(b) Mr. C. A. Shay or his successors at this location be allowed an additional 15 minutes daily at the penalty rate commencing August 25, 1958, and to continue until such time as drinking water and toilet facilities are furnished at the headquarters.

EMPLOYEES' STATEMENT OF FACTS: Some time prior to May 29, 1957, the building in which the Signal Maintainer's headquarters was located at Athens, Ohio, was torn down and the headquarters was moved to a building that formerly housed his motor car. This building had no windows, water, lights, nor any of the other facilities that are required by Rule 58 of the current Signalmen's Agreement. On May 29, 1957, the Brotherhood's representative, Local Chairman C. B. Bruno, wrote Mr. B. J. Johnson, Division Engineer, and informed him that the headquarters provided for the Signal Maintainer at Athens, Ohio, did not comply with Rule 58 of the agreement. Division Engineer Johnson did not reply to Local Chairman Bruno's letter of May 29, 1957, and Local Chairman Bruno again wrote him on July 2, 1957, advising him that he had not as yet received a reply to his letter nor had any action been taken to improve the headquarters at Athens to comply with Rule 58.

Division Engineer Johnson still did not acknowledge or answer Local Chairman Bruno's communications of May 29, 1957, and July 2, 1957, and Local Chairman Bruno wrote him once again under date of November 4, 1957, requesting an answer to his previous letters. Subsequently, under date of November 29, 1957, Division Engineer Johnson wrote Local Chairman Bruno and stated that since heating and lighting had been installed in the building, this headquarters now complies with Rule 58 in his opinion.

Under date of December 7, 1957, Local Chairman Bruno wrote Division Engineer Johnson and informed him that the headquarters still did not comply

MR. CLARK: (Jesse Clark, Employes' Arbitrator and Grand President of the Brotherhood of Railway Signalmen) Mr. Crawford, there is no penalty provided in Article 8, Section 10 for the Carrier's failure to comply with it, as pointed out by Mr. Cone, is there?

THE WITNESS: There is no penalty in the schedule, no sir."
(Emphasis ours.)

As in the case of the rule appearing on the Pennsylvania Railroad in Award 7847, there was no penalty contemplated by the parties to Rule 58 of the contract on this property. The claim in Award 7847 was denied.

SUMMARY

There has been no violation of the contract with the Brotherhood of Railroad Signalmen in this case.

Carrier asserts that the claim at both parts (a) and (b) are without merit. The Carrier petitions this Division to deny this claim in its entirety.

OPINION OF BOARD: The record supports Petitioner's claim that Carrier failed to "make available" drinking water and water suitable for domestic use at Maintainer's headquarters at Athens, Ohio, within the meaning of Rule 58 of the Agreement.

Water was made available on April 9, 1959, within a distance of 12 feet from the headquarters, Carrier thereby coming into compliance on that date. Therefore violation in this respect existed for the period August 25, 1958 to April 9, 1959.

It is further claimed that Carrier also violated that portion of Rule 58 which provides that "... toilets shall be accessible."

We are of the opinion that the language chosen by the parties in respect to toilet facility requirements compels assurance of certainty of usability at a point within reasonably close proximity and convenience from the headquarters structure.

In its submission, Carrier refers to a toilet located within 525 feet of the headquarters building of the Signal Maintainer and 31½ feet from the center line of the closest track.

Petitioner states concerning the alleged location of such a facility: (1) No reference to it was made in the discussions on the property and therefore this may not now be considered as any part of the Carrier's position before this Board, and (2) investigation of these alleged facilities made by Petitioner disclosed that the toilet referred to was locked with a special car lock which could be opened only by a Car Repairman; therefore the place was not accessible to Signal Maintainer.

An examination of correspondence appearing in the record, of Memorandum of Conference between the parties held on November 14, 1958 and of "Joint Statement of Agreed Upon Facts" contained therein, as well as comparison of dates of correspondence and of the initiation of action before this Board, shows that the Petitioner's position is well-taken concerning inadmissibility of a claimed location of toilet facility approximately 525 feet from Maintainer's headquarters. Carrier's position up to January 7, 1960, the date

on which Petitioner served notice of claim on this Board, is shown to have been that:

(a) Water but not toilet facilities were available in Freight Station located 1,250 feet east of headquarters, and

(b) toilet and water facilities were available in passenger station located 1,800 feet east of headquarters.

Under these circumstances, the facts before us are those recited in (a) and (b) of the foregoing and our determination must be made in response to positions based on said facts only.

Our conclusions are that Rule 58 was here violated both in respect to water availability and toilet accessibility. There is no showing in the record that the lack of toilet facility was remedied as of any particular date—as in the case of the water facility.

As to appropriate redress, the following considerations arise:

1. The Agreement does not provide for penal levies for violations of this kind.
2. We are persuaded that tangible injury of a kind generally translatable into dollars and cents values was inflicted on Claimant by the violations which here occurred.
3. It is not now reasonably possible to compute such damages in precise quantitative terms of cause degree and loss effect.
4. A determination is justified and called for which would constitute an "appropriate finding of damages" (See Award 5186) to remedy the effect on the Claimant of lack of compliance.

On the basis of the foregoing considerations we deem appropriate compensation to be 15 minutes pay at regular time rates for all working days during the period of August 25, 1958 to April 9, 1959 and an additional amount equal to 10 minutes pay at regular time rates for all working days from the period April 10, 1959 to such date as the Carrier continued in violation by not making toilets accessible.

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 Agreement was violated in respect to failure to make available water facilities at Maintainer's headquarters at Athens, Ohio for the period of August 25, 1958 to April 9, 1959 and also in respect to failure to make

toilets accessible at the same location for the period of August 25, 1958 until such later date as such facilities have been or will be made accessible to him.

AWARD

Claim is sustained to the extent that Claimant be allowed an additional 15 minutes daily pay at regular rates for the period August 25, 1958 to April 9, 1959 and 10 minutes daily at regular rates for the period of April 10, 1959 to such date as toilet facilities have been or will be made accessible to him.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.