Award No. 14133
Docket No. SG-14217

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, 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 violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly Rule 65.

(b) Mr. C. A. Thomson be reimbursed in the amount of $20.40 for room rent from January 22 to 25, 1962, inclusive.
[Carrier's File: SIG 46-64.]

EMPLOYES' STATEMENT OF FACTS: This dispute is based on our contention that Carrier violated Rule 65 of the current Signalmen's Agreement when the living quarters (house trailer) to which Claimant had been assigned did not meet the requirements of that rule, and that because of that violation, Claimant should be reimbursed for the room rent he paid for the period January 22 through 25, 1962 (four nights at $5.10 per night).

Claimant's assignment at the time this dispute arose was on a position with headquarters in a small house trailer provided by the Carrier.

Rule 65 provides, in part, that trailers shall be equipped with lights, water, shower baths, stoves, refrigeration, and cooking utensils, beds and mattresses, **and that such equipment shall be kept in working condition by the Company.**

On the dates listed in the Statement of Claim, the refrigeration equipment in the trailer assigned to Mr. Thomson as his living quarters was not functional, and had not been in working order for about eight weeks. During this period, Mr. Thomson made several requests that the equipment be repaired, but nothing was done.

Inasmuch as Mr. Thomson's living quarters did not meet the requirements of Rule 65, he established temporary residence elsewhere (in a motel) until his assigned living quarters were brought into compliance with the provisions of that rule.

OPINION OF BOARD: Claimant was assigned to position of lead signalman, including a trailer furnished by the Carrier. Over a period of time, he worked his way from Douglas, Arizona, to Deming, New Mexico, with several intermediate stops.

In issue here, is an expense account voucher submitted by the Claimant seeking reimbursement for lodging from January 22 to 25, 1962, inclusive, at the Mirador Motel in Deming, New Mexico. The Organization contends that the Claimant was compelled to vacate the trailer furnished by the Carrier due to a defective refrigerator unit included as part of the trailer equipment. The instant claim was progressed on the contention that the Carrier was obligated to maintain the refrigerator in a functional condition, in accordance with Rule 65 of the effective Agreement between the parties.

In seeking reimbursement, the Claimant contended that the refrigerator would not oeprate when placed in a level position according to the manufacturer's specification. Therefore, he was compelled to seek lodging elsewhere. It is noteworthy, that the Organization advanced the following statement, ". . . that subsequent experimenting with this equipment disclosed that it had to be tipped forward an inch or two at the top in order to function properly."

The Carrier declined to pay the claim on the premise that the butane gas operated refrigerator was not defective. The following quote basically depicts its position:

> "Investigation developed that the refrigeration, which is a butane gas operated refrigerator, was not out of order, but that it must be in a level position to operate properly, and that any difficulty that may have been experienced with it was due to trailer not being properly leveled. The refrigerator was subsequently inspected by Automotive and Work Equipment forces and found not to be in need of repairs. It was not repaired on dates in question or on any other date immediately subsequent thereto and signalmen who occupied the trailer subsequent to claimant did not report any difficulty with the refrigeration."

It appears to us that the primary question to be resolved is whether the Carrier violated its obligations under Rule 65 of the current Agreement or, was the employe at fault as contended by the Carrier. The said Rule provides as follows:

"RULE 65.

OUTFIT CARS AND TRAILERS

It shall be the policy to maintain outfit cars in good and sanitary condition and to furnish steel cots, shower baths and provide sufficient means of ventilation and air space. All dining and sleeping cars shall be screened. Outfit cars used for road service shall be equipped with springs consistent with safety and character of car and comfort of employes.

It shall be the duty of the foreman to see that cars are kept clean. Kitchen and dining cars shall be furnished and equipped with stoves, utensils and dishes, in proportion to the number of men to be accommodated.

Where outfit cars or trailers are furnished as home station they shall be identified as such and positions advertised with home station at outfit cars or trailers shall be established at a particular unit outfit car or trailer. Employes other than those covered by Article 4 shall not be transferred from one outfit to another, except in an emergency, or in the exercise of seniority.

The Company shall not require employes to move trailers with their private vehicles. When trailers are moved they shall be parked in suitable places, with electricity, water and sanitary facilities available. Employes shall be given sufficient advance notice of trailers being moved to prepare them for moving.

The Company shall supply trailers with sufficient butane and kerosene (fuel oil) at all times; if the delivery of butane and kerosene (fuel oil) is delayed the employes shall purchase the same locally and be reimbursed for the cost of same.

When consistent with the work to be done, trailers will be parked near stores; if not possible to park near stores the Company shall arrange for the delivery of food and supplies.

Where there are more than two trailers in a signal gang, the Company will furnish a railroad car or trailer for general use.

Employes required by the Company to travel by public conveyance or trains in connection with the movement of trailers shall be paid actual time, not to exceed eight hours at the straight time rate, as full compensation for all time traveling or waiting between the end of the regular working hours of one day and the beginning of the regular working hours of the following day, except, when five (5) or more continuous hours of sleeping accommodations are available between the hours of 9:00P. M. and 6:00 A. M., no compensation shall be allowed for time actually traveling or waiting. An employe required to perform service in connection with hooking up trailer after his assigned working hours shall be compensated at one and one-half times his regular rate of pay for such service. If trailers are not available employes assigned thereto will be reimbursed for cost of meals and lodging.

Trailers shall be equipped with lights, water, shower baths, stoves, refrigeration, and cooking utensils, beds and mattresses, in proportion to the number of employes to be accommodated, and the above equipment shall be kept in working condition by the Company."

The above quoted Rule undeniably places upon the Carrier the responsibility of maintaining the equipment in working condition. Additionally, the employe using the trailer has the responsibility of preparing the trailer for moving and also of hooking it up after moving. Analysis of the record reveals that the malfunction was not due to a mechanical defect in the refrigerator unit itself, but was attributable to improper leveling. Whether such improper leveling was induced by the Claimant failing to properly hook up the trailer after moving and, thus, causing it to be improperly parked, is a question of fact which we are not in a position to resolve. We can only be guided in this respect by the Carrier's statement that the refrigerator unit, upon inspection, did not require any repairs then, nor subsequently. It is, therefore, our con-

clusion that the Carrier did not violate that portion of Rule 65 which obligated it to maintain the trailer equipment in working condition.

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 8th day of February 1966.