



Award Number 17932

Docket Number MW-18387

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it allowed B&B Carpenter Donald L. Pisarczyk two (2) dollars per day meal allowance instead of three (3) dollars a day for each of 61 days within the period extending from December 28, 1967 through March 4, 1968. (System File: D-8-52/MW-11-68)
- (2) The Carrier be required to pay B&B Carpenter Donald L. Pisarczyk sixty-one (61) dollars as reimbursement for the loss suffered as a consequence of the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The claimant was furloughed from his position in a stationary B&B gang located at Pueblo, Colorado. Thereafter, he exercised his seniority rights to a position in traveling B&B Gang 7181, which was headquartered in outfit cars furnished by the Carrier. He worked in that gang from December 28, 1967 through March 4, 1968, after which he returned to the stationary gang at Pueblo, Colorado.

The outfit (kitchen) cars furnished to B&B Gang 7181 in which to prepare and eat meals was not adequately equipped for that purpose. It was not equipped with a gas or oil cooking stove. It contained only one small coal cooking stove. It did not contain either hot or cold water and it was not provided with a water heater or with sanitary receptacles for the storage of water. Therefore, the cooking facilities available to the claimant while working with B&B Gang 7181 did not meet the minimum requirements of Rule 19(a), which reads:

"The Company shall provide for employees employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in outfit cars, camps, highway trailers, hotels or motels, as follows:

- (a) If outfit cars are furnished they shall be maintained in good mechanical repair and in a clean, healthful and sanitary condition. They shall be provided with hard surface (linoleum or equal) floors, wired for electricity, screened, equipped with oil or gas stoves, air circulating device, showers, washing facilities, closets or lockers. Furnishings shall include sturdy steel bunks, mattresses,

men on the gang used these facilities for their meals is sufficient proof that the necessary facilities were furnished.

"Claim is denied.

Yours truly,

(Signed) J. W. LOVETT

J. W. Lovett
Director of Personnel"

The Organization's letters have not been reproduced as the General Chairman's letters are all quoted in Carrier's letters denying this claim.

OPINION OF BOARD: Claimant, a B&B carpenter, was a member of traveling B&B Gang 7181, which was headquartered in outfit cars furnished by the Carrier, during the period of this claim, December 28, 1967 through March 4, 1968.

The issue is whether Claimant is entitled to meal allowance of \$3.00 per day as provided in Rule 19 (f) and (g), or, as alleged by the Carrier, that Claimant was properly compensated at \$2.00 per day as provided in Rule 19 (e).

Under Rule 19 (a) of the Agreement, Carrier has agreed to provide its outfit cars with specific equipment to facilitate preparing and serving of meals to occupants thereof. Throughout the handling of claim on the property the Organization contended that the outfit car involved did not meet the provisions demanded of the rule. The record affirmatively shows that Carrier did not deny the Organization's contention that the outfit car lacked a gas or oil stove and sanitary receptacles for the storage of water as provided in the rule. Carrier's only defense, on the property, was premised on a conclusionary statement that four other men on the gang used the facilities for their meals as sufficient proof that the necessary facilities were furnished. In its submission to the Board, Carrier asserted various other defenses but which the record affirmatively shows were not raised during the handling on the property. It is well established that issues and contentions raised for the first time before the Board will not be considered.

We cannot accept the Carrier's conclusion that Claimant's entitlement under the provisions of Rule 19 (a) be abrogated because others utilized the facilities which did not meet the provisions of the rule. It is suffice to say that Carrier did not provide the necessary facilities specifically required by Rule 19 (a), which constituted a breach of the Agreement by the Carrier.

We conclude Claimant is entitled to meal allowance as provided in Rule 19 (f) and (g).

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.