

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20133  
Docket Number SG-19967

Joseph A. Sickles, 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) Carrier violated Rule 58, when, on or about February 19, 1971, toilet and water facilities at the Maintenance Unit Headquarters, West Newton, Pa., were unusable.

(b) Carrier should now pay to Signal Maintenance Employees Charles T. Green, Marion D. Swaney, John Zurick, Jr., and James E. Brown one dollar (\$1.00) per day until such time as this condition is corrected.

(Carrier's File: 2-SG-48; 2-S-9-1)

OPINION OF BOARD: Claimants allege that Carrier violated Rule 58 because toilet and water facilities at the Maintenance Unit Headquarters were unusable. Rule 58 requires:

"Headquarters will be provided for all hourly-rated employees and shall be kept in good repair by the Company and in clean and sanitary condition by the employees. They shall be properly heated and lighted and sufficient air space provided. Drinking water and water suitable for domestic use shall be made available. Headquarters shall be adequately furnished with chairs, desks and lockers and toilets shall be accessible."

It appears that from mid-February until sometime in September of 1971, the toilet facilities at Claimants' Headquarters were virtually unusable.

The Carrier appeared to recognize a violation because in early May, 1971, the Division Engineer advised the Local Chairman:

"To eliminate this complaint....I propose to change the headquarters....to the Passenger Station....where all facilities required by Rule 58 are available."

Although Carrier now argues that the employees rejected the proposal, the record, as established on the property, fails to confirm that fact. Under the rules of this Board, we may not consider matters raised after submission here.

From a review of the entire record we conclude that there was a violation of the Agreement.

The Organization seeks nominal damages in the amount of \$1.00 per day for each Claimant during the period of the violation, citing Award 13092 (West). We are reluctant to award any damages in this dispute. While we do not discount that certain inconveniences may have been suffered by Claimants from time to time, they obviously recognize an impossibility of establishing either the fact, or quantum, of monetary damages. We have no authority to impose a punishment see Award 19750 (Lieberman) and Awards cited therein, nor will we engage in speculation (see this Referee's Award 19832).

The record shows that Claimants were advised to use other facilities. Nothing of record suggests that Carrier objected to any additional time consumption occasioned by the alternate usage. Delay in correcting the violation was occasioned by necessity of installing new septic facilities, due to anti-pollution and ecological requirements. The record fails to show that under the circumstances the Carrier was dilatory in its correction of the problem.

Award 13092, cited by Claimants, suggested an award of nominal damages as a prevention of a recurrence of a violation. While nominal damages may or may not be an appropriate remedy for an Agreement violation (we do not decide that issue), there is nothing of record here to suggest, in any manner, that Carrier was indifferent toward, or ignored, the violation. In point of fact, Carrier recognized the difficulty and corrected same. For the reasons stated above, we will deny Claimants' claim for damages. See Award 18283 (Devine).

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

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That the Agreement was violated.

A W A R D

Claim (a) is sustained.

Claim (b) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1974.