

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22255
Docket Number SG-22104

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

(a) The Southern Pacific Transportation Company (Pacific Lines) has violated and/or misapplied the Agreement between the Company and its Employees in the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective October 1, 1973 and particularly Rule 25, by not furnishing suitable eating and sleeping accommodations and refusing to reimburse claimants for cost of suitable lodging facilities, when held away from home station overnight.

(b) The following claimants be reimbursed the amounts of \$25.20 each as claimed on Personal Expense Account Forms C. S. 148, submitted February 20, 1976 and denied by Division Engineer's letter dated March 17, 1976:

Leading Signalman D. R. Thomas
Signalmen R. T. Hopson, N. S. Anderson, G. T. Fortin"

/Carrier file: SIG 108-67/

OPINION OF BOARD: Rule 25 provides (concerning employees who are held out overnight) that if meals and lodgings are not furnished by Carrier, actual necessary expenses will be allowed.

In early-February, 1976, Claimants were instructed to stay in Carrier's lodging facilities at Ashland, Oregon. After one night, the Lead Signalman advised Carrier that the facilities were not suitable and permission was requested to stay at a motel. Permission was denied. Nonetheless, the employees moved to a motel, incurred certain expenses, and they now seek reimbursement.

Basically, the Employees contend that the modular units in question were too small, not clean, had inadequate hot water for bathing, did not provide clean towels or soap, were not "made up" when the men returned from work, and they were located in the railroad yards so that noise precluded the ability to sleep. Further, the units were located one mile from suitable eating facilities, and the employees did not have their own private transportation to travel the distances involved.

Initially, Carrier denied the claim because the modular units were used by "...train crews, supervisors and other employees without comment or complaint", and it commented that "...complaints regarding lack of soap, towels and rooms not made up are such problems as could have been encountered in a commercial motel." Further, it noted a lack of any indication that attempts had been made to correct the conditions with "the people in charge." The Claimants replied that there were no people at the units at any time they were there "...who might have been responsible for these units."

Of significance to this dispute, we note that Carrier concedes that the employees did contact Supervisory Personnel prior to moving out, and the employees state that they brought the units' shortcomings to the attention of those individuals.

In its Submission to this Board, the Carrier makes certain factual allegations concerning the manner in which the modular units are operated, and it repeats the contention that the employees voluntarily left the facility for no valid reason. In addition, the Carrier has appended to its Submission, as Exhibit A, pictures of the interior and exterior of the units in question. In its rebuttal statement, the Organization points out that the pictures were not a part of the evidence in the handling of the claim on the property and, accordingly, are not properly before this Board for consideration.

Concerning the assertion that the Claimants were required to walk nearly a mile to eating facilities, in its Reply Brief, the Carrier refers to a Carrier owned vehicle and states that "...it is very likely that this same vehicle was utilized to transport claimants to an eating place..." It also refers to certain signs posted at the facilities. Obviously, these items were not considered on the property and are not properly before this Board.

Certainly, the contractual requirement to provide meals and lodging clearly requires that the accommodations be "suitable", and we do not read the Company's submitted documents as disagreeing with that concept.

The test of what is, or is not, suitable is indeed a very subjective determination and each individual could draw his own conclusion concerning the suitability based upon a number of factors. However, as we review the record in this case, as it was developed on the property, we feel that the Claimants did make a prima facie showing that the accommodations were not suitable, and it was then appropriate for the Carrier to rebut that showing with contrary factual assertions. Instead, the Carrier seemed to be content to rely upon its June 4, 1976 denial as a complete defense to the claim. In that document, it stated that other individuals have used the housing without complaint and it invited attention to Award 16518.

The fact that other employees may have utilized the units without complaint is suggestive of the fact that the accommodations are suitable; however, it may very well be that while the accommodations were suitable at one point in time to certain groups of individuals, they were not acceptable at another point in time. If, in fact, at the time in question, the units were not cleaned, did not have hot water for bathing and the Carrier failed to provide clean towels and soap, a question of suitability concerning that period of time is clearly raised. When one adds to that the concept that the facts - as developed on the property - indicate that the employees were required to travel a distance of approximately one mile each way to the nearest establishment which provided food, we have a further question of suitability as a living accommodation.

The Board has reviewed Award 16518, cited by Carrier, but we do not feel that it controls this case. There, the facts demonstrated four potential problem areas, however the record showed certain mitigating factors. Here, the record, as developed on the property, failed to mitigate the assertions made by the employees. Accordingly, we are inclined to sustain the claim as it relates to this particular record. That is not to say, however, that in a subsequent case (if various factors were to be presented and developed on the property) the result would necessarily be the same. For instance, the photographs attached to the Employer's Submission, as Exhibit A, would seem to indicate a comfortable accommodation.

That, coupled with evidence to overcome any allegations of lack of soap, towels, hot water, etc., and evidence to show that food is available without a one-mile walk, could quite clearly result in a denial award. However, as noted above, we are confined to the record before us, and under this record, we will sustain the claim.

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:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1978.