

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22420
Docket Number SG-22399

George S. Roukis, 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 the Agreement effective October 1, 1973, between the Company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen and particularly Rules 67(b)(2), 67(c) and 60(d).

(b) Mr. J. O. McArthur be allowed meal allowance and daily allowance for linens in accordance with hereinabove rules and Rule 67 (b)(4). In addition, in accordance with Rule 60(d), we request that Mr. McArthur be granted these allowances from sixty days prior to the filing of his original claim on December 23, 1976."
/Carrier file: SIG 108-70/

OPINION OF BOARD: This Board has carefully reviewed the procedural questions raised in this dispute and finds that the claim is technically arbitrable.

Inasmuch as claimant initially accepted the sum total conditions of his new employment, there was no bar against grieving any of these terms and understandings. He filed the claim within sixty (60) days of his employment and whether it was meritorious or not would be decided by the grievance appeals process.

We recognize that the first step claim was presented more in the format of an informational request than an asserted claim but we believe that it was sufficiently clarified at the next step to make it procedurally acceptable.

Accordingly, having thus found the claim to be properly before us, we will now assess and discuss its substantive merits.

Our detailed analysis of the events, developments and circumstances surrounding the positioning and use of the contested facility at the lakeside location persuades us that the parties accepted its status as a fixed point housing unit. It was assigned to predecessor employees as a non trailer payment residence and was uncontested during its tenure and occupancy.

While Rule 67, section (b) (2) and (c) provide appropriate meals and linens allowances, they were never given to occupants of this facility.

Under these specific and clear conditions, it is very difficult for this Board to conclude that the housing accommodations is a live away lodging as defined by Arbitration Award 298 and the Rules previously cited.

The parties' unequivocal non meal and linen payments arrangement created an institutionalized past practice that cannot be avoided in this instance.

In Third Division 14229, we held in pertinent part that:

" . . . To, therefore, require a subsequent change based upon a protest would negate the entire meaning and utility of past practice. More specifically, once a practice is established and adopted by both parties as the proper interpretation of a Rule neither party unilaterally should be allowed to abandon that practice anymore than he should be allowed to abandon a written rule."

We see no reason why this holding is inapplicable herein. It is regrettable that the facility is less than desirable, but it has been accepted by prior occupants as a non meal and linen payment housing accommodation. Our responsibility is to adjudicate contested agreement violations. We have no power to rewrite collective agreements. If the parties wish to change this particular arrangement, it must be done by the collective bargaining process.

Based on the foregoing findings and conclusion, we must deny 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.