

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23431
Docket Number SG-23093

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Southern Railway Company

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

Request that Carrier terminate the practice of releasing some of the motel rooms used by signal gangs before the end of the work week, which results in more than two employees being required to use the same room the last day of the work period." (General Chairman file: SR-38. Carrier file: SG-331)

OPINION OF BOARD: The instant dispute arises over Carrier's issuance of a Notice dated February 2, 1978, which specified that Carrier would only hold two (2) motel rooms for System Signal Gang employees' clean-up before returning home after completing work on the last work day of their assignment. Organization contends that said Notice is a violation of Rule 12(a) of the parties' System Gang Agreement dated April 9, 1974 effective May 1, 1974 and revised December 3, 1975. In addition, Organization further contends that the effect of said notice ("...more than two men occupying one twin bedded room"), "causes an undue hardship on the employees...nor is it healthful, sanitary or suitable..." Carrier's position stated simply, is that: (1) Rule 12(a) of the applicable System Gang Agreement(s) "contemplates accommodations before a work day, not after" and therefore does not specifically require any rooms to be held on the last work day of the work period; (2) Carrier's position is supported by both past practice and reason; and (3) Carrier's issuance of February 2, 1978 Notice was not the institution of a new policy, but instead was merely a reaffirmation of an existing policy which recently had not been properly enforced by some Signal Foreman.

The Board has carefully read and studied the complete record in this dispute and finds that Carrier's position is the more persuasive of those which have been proffered and which, therefore, must prevail.

While it is indeed true that, when read alone, the disputed language of Rule 12(a) is ambiguous, it is equally true that ever since the System Gang Agreement was agreed upon by the parties in 1974, Carrier's practice, which apparently was known by Organization but which remained uncontested by same, has been to retain only two (2) rooms for clean-up purposes following the System Signal Gang's completion of work on the last day of a work period. Given these facts, together with an adherence to the arbitral principle which establishes that "...where language in a contract is ambiguous the intention of the parties can best be ascertained by the past practice of the parties" (Third Division Award 12367), this Board is led to the inescapable conclusion that Organization's interpretation of the disputed language of Rule 12(a) is incorrect and this is insupportable.

Although, given the thrust of the argumentation and the specific facts of record, the above posited rationale is certainly a sufficient basis upon which to dispose of this matter, the Board, nonetheless, feels compelled to comment upon one final aspect of the case before concluding, and that is Organization's contentions regarding the "undue hardship" and the "unhealthy, unsanitary or unsuitable conditions" which allegedly would be caused by four (4) employees using the same motel room for clean-up purposes. In this regard, suffice it to say that while it has been determined that Carrier's actions herein did not violate Rule 12(a), and while an arrangement in which four (4) employees share a clean-up room is not, per se, unsuitable, unclean, unhealthy or unsanitary, the fact remains that such an arrangement, given the specific facts thereof, could be a violation of said Rule, and the Organization in such a situation would be free to file a claim and to pursue the matter through the parties' negotiated grievance procedure. Once having taken such action, however, the burden of proof rests with the Organization which, thereafter, would have to prove its charges through the use of creditable and probative evidence of sufficient quality and quantity. Obviously, Organization's success or lack thereof in such an undertaking is directly related to the sufficiency of the evidence adduced. The mere allegation or inference that a particular condition or situation exists without any further offering of proof by the charging party --- such as was the case in the instant dispute --- is completely inadequate and, invariably, will be rejected. Organization, by virtue of this award, therefore, is so advised.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

