

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23434
Docket Number MW-23256

Arnold Ordman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Maintenance of Way Employees
{ St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the Agreement when it allowed the members of System Steel Bridge Gangs living in camp cars a daily meal allowance of either \$2.00, \$3.20 or \$3.50 per day instead of either \$3.00, \$4.80 or \$5.25 per day (System File F-12350/D-9814).

(2) The claimants each be allowed an additional \$1.00 per day beginning sixty (60) days retroactive from November 15, 1978, an additional \$1.60 per day beginning November 1, 1978 and an additional \$1.75 per day beginning July 1, 1979 because of the violation referred to within Part (1) hereof."

OPINION OF BOARD: The dispute in this case arises from a claim that Carrier violated the Agreement when it failed to provide to its employees the meal allowance called for when cooking and eating facilities are not provided.

Rule 81 (a), (b) and (c) of the Agreement incorporated Section 1-B of Arbitration Award No. 298 and reads:

"(a) If the Carrier provides cooking and eating facilities and pays the salary or salaries of necessary cooks, each employe shall be paid a meal allowance of \$1.00 per day.

(b) If the Carrier provides cooking and eating facilities but does not furnish and pay the salary or salaries of necessary cooks, each employe shall be paid a meal allowance of \$2.00 per day.

(c) If the Carrier provides camp cars but does not provide cooking or eating facilities, each employe shall be paid a meal allowance of \$3.00 per day."

Organization contends that because Carrier has not provided cooking or eating utensils, Claimants are entitled to the allowance provided in Rule 81(c) rather than the allowance under Rule 81(b) which the Carrier had granted. Organization submits that the existence of a stove, refrigerator, table and chairs does not satisfy the requirement of "cooking and eating facilities" when cooking and eating utensils are not provided.

Carrier states that it has never furnished cooking and eating utensils, that camp car employes have furnished their own utensils, that this has been the practice for over 30 years. Carrier acknowledges that when meals were provided by an outside contractor, the outside contractor made such utensils available. However, when the contract with the outside contractor terminated, the employes furnished their own utensils. Carrier submits that the equipment it made available here in its Univan camp cars fully satisfied the requirements of Rule 81(b) and that Rule 81(c) is not applicable.

Organization believes that "cooking and eating facilities" contemplate the furnishing of cooking and eating utensils. Carrier submits that past practice precludes such an interpretation.

We conclude that Organization's view is correct. Arbitration Board 298 from which Rule 81 derives certainly contemplates that under Rule 81(a), when Carrier provides cooking and eating facilities and pays the salaries of the necessary cooks, cooking and eating utensils are to be provided also. Moreover, Organization points to the fact that following the execution of Award 298 a number of carriers submitted questions to Carrier Members of that Board regarding application of that Award. The question and answer directly relevant here read as follows:

"Question: What constitutes 'cooking and eating facilities' as minimum?

Answer: Stove, utensils, dishes, cutlery."

We find sufficient support in the record, therefore, to conclude that under Rule 81 the phrase "cooking and eating facilities" includes utensils for the preparing of food and cutlery for eating the food. We so hold.

However, we cannot overlook Carrier's unrefuted evidence of a consistent past practice of not furnishing such utensils. Organization's unexplained failure, heretofore, to assert its rightful objection to this practice persuades us that it would be inequitable in all the circumstances to honor the claim for compensation in this dispute. Accordingly, the claim for compensation in the instant case will be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Award Number 23434
Docket Number MW-23256

Page 3

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

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.