

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29378
Docket No. SG-29521
92-3-90-3-459

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

(former Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the CSXT, Inc. (former L&N):

Claim on behalf of J. L. Owens et al., for reimbursement of cost of lodging expenses, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 59, when it arbitrarily assigned them to share lodgings." Carrier file 15 (89-60) G.C. file (89-Sys-02) BRS Case No. 8115-CSXT.L&N.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute involves claims for reimbursement of expenses for separate motel rooms for System Signal Testers and System Signal Tester Helpers. The dispute was precipitated by a Carrier letter dated June 13, 1989, advising Testers and Tester Helpers that effective July 1, 1989, they would be required to share hotel rooms. Applicable Rules of the Agreement are as follows:

"RULE 29. EXPENSES.

(a) Employes sent away from home station or territory will be reimbursed for actual additional necessary expenses incurred for meals and lodging. Expenditures of any other kind which any employe is instructed to incur will also be reimbursed.

(b) Employes will be paid a month's expenses not later than the time when they are paid for the service rendered during the last half of the month.

(c) Effective as of May 6, 1966, complaints of camp car outfits or any facility furnished by the railroad for living accommodations failing to meet requirements of the rules will be made in writing to the General Superintendent Communications and Signals by the General Chairman, setting out in detail the items complained of. Within 30 days after date of the complaint, a joint investigation will be made by the General Chairman and General Superintendent communications and signals or Signal Engineer. If the complaint is found to have merit, the conditions will be corrected within 30 days after the investigation and if not corrected at the end of such 30-day period, the employes may obtain suitable living accommodations at the expense of the carrier."

"RULE 52. RATES OF PAY.

(a) The following minimum rates of pay are hereby incorporated in and made a part of this agreement and they shall remain in effect and unless changed in the manner provided by the Railway Labor Act:

(c) Signal Testers and Foremen. The regular hours of service of Signal Testers and Foremen shall be eight hours per day.

They shall be allowed a credit of fifteen hours per calendar month toward their 211 2/3 monthly hours, provided for below, to cover all time spent outside of regular hours on days exclusive of rest days in lining up work and rendering reports required of them in connection with their duties.

Except for service on assigned rest days, the monthly rate for Signal Testers and Foremen shall cover all service performed, including overtime for the first six days of their work week, up to 211 2/3 hours in any calendar month. Actual time worked or held for duty, exclusive of service on assigned rest days, in excess of 211 2/3 hours in any calendar month will be paid for at the rate of time and one-half. Ordinary maintenance or construction work will not be required on the sixth day of the work week and an earnest effort will be made to allow such employes to be off on such sixth day, Saturday if possible, and on recognized holidays, without deduction in pay thereof. When so relieved, time off for such relief for a full day period shall not be considered as time worked or held for duty.

Signal Testers and Foremen shall have one regularly assigned rest day each week, Sunday if possible, and if required to perform service on such assigned rest day, they will be paid, in addition to the monthly rate, overtime in accordance with rules of the agreement which apply to hourly rated employes.

Where the rest day and holiday, call, overtime and other rules of this agreement require payment to employes covered by the scope of this agreement, such rules shall not apply to Signal Testers and Foremen on the first six days of the work week except that a Tester or Foreman will, until 211 2/3 hours is reached in a calendar month, be credited towards his 211 2/3 monthly hours on the basis of one minute for each straight time minute and one and one-half minutes for each overtime minute where service described in such rules is performed. When 211 2/3 hours actual time worked or held for duty has been accumulated, they will thereafter be paid for actual time worked or held for duty at the time and one-half rate.

The straight time hourly rate for these employes will be determined by dividing the monthly rate by 211 2/3 hours."

"RULE 59 - CAMP CARS.

Effective as of May 6, 1966, on-rail camp car outfits shall be furnished for employes assigned to gangs and to signal testers. Employes shall not be permitted to live in or occupy any portion of the car which is used for tools or materials. Camp cars shall be adequate for the purpose and shall be maintained in a good, clean, healthful and sanitary condition and free from leaks. Bathing and washing facilities with hot and cold water shall be furnished with adequate storage facilities to accommodate the employes assigned to the outfit. The camp cars shall be provided with toilet facilities. Sufficient air space and recreation space sufficient to accommodate the number of men in the gang shall be provided and shall be used for no other purpose. Kitchen, dining and sleeping cars and recreation space shall be screened. All cars shall be equipped with furnishings in proper proportion to the number of men to be accommodated. They must be equipped with springs

consistent with safety and character of car and comfort of employes. It will be the duty of the foreman or tester to see that cars are kept clean and in good sanitary condition at all times, which shall be done at company expense. Drinking water, water suitable for domestic uses, free from rust and other matter, fuel, electric or other suitable refrigeration and suitable electric receptacles for the number of men to be accommodated shall be furnished. Furnishings referred to herein shall include stoves, kitchen and dining utensils and dishes, soap, chairs, lockers, spring cots; mattresses, blankets, pillows, bed linens and towels shall be furnished and maintained in a clean, healthful and sanitary condition.

The company will furnish and pay the wages of cooks and in the event the cook is absent, expenses for meals will be allowed.

By agreement between the management and the General Chairman, off-rail commercial trailers which meet the above requirements may be substituted for on-rail cars.

* * * * *

5. With respect to Section 11 of the Arbitration Award, the employes elect to retain provisions of existing rules of the general agreement in lieu thereof. It is understood that Rules 21, 22 and 29 shall continue in effect for employes sent away from home station in accordance with such provisions."

On June 16, 1989, the General Chairman wrote a letter to the Signal Engineer disputing the wisdom of Carrier's decision to require Testers to share a room with their Helpers. In that letter he proposed several reasons he felt Carrier's decision was ill-advised and asked Carrier to reconsider its decision.

On August 21, 1989, the General Chairman submitted claims for reimbursement of lodging expenses incurred when two System Signal Testers and two System Tester Helpers declined to share hotel rooms. The claims were denied and were subsequently appealed up to and including the highest Carrier officer authorized to handle such matters.

At the outset, the Organization's argument is not persuasive that the claim must be sustained by default, since Carrier failed to respond to the Organization's letter of June 13, 1989. That letter was in the nature of a protest or complaint, but cannot, even read most liberally, be termed a grievance. Since that letter of protest did not constitute a formal claim, Carrier was not obliged to respond to the letter and contractual time limits on Carrier's response did not begin to run. Accordingly, the Board must dismiss the Organization's procedural objection.

With respect to the merits of the claim, the Organization maintains that Carrier has violated the Agreement and a long-established practice of reimbursing System Signal Testers for the actual necessary expense of separate lodging facilities. It also notes that Foremen had similar responsibilities to System Signal Testers after work hours (performing paper work and planning for the next day) but Foremen are provided separate accommodations. Thus, since System Signal Testers are required by their jobs to have responsibilities similar to those of Foremen, they should be accorded similar accommodations. Accordingly, the Organization asks that Claimants be reimbursed for the cost of single accommodations, and that Carrier's policy of room sharing be discontinued.

For its part, Carrier asserts that its decision to require System Signal Testers and System Signal Helpers to share rooms does not violate any Agreement Rule. Nor are the claims for reimbursement of expenses incurred by employees who failed to comply with reasonable instructions supported by any Agreement Rule. It notes that by Agreement dated April 3, 1973, (Appendix "W" of the L&N Signalmen's Agreement), the parties agreed to eliminate the use of camp cars pursuant to provisions of Article VI - "Camp Cars" of the November 16, 1971 BRS National Agreement. It was agreed that Carrier would provide hotel or motel lodging "with not more than two employees occupying one twin-bedded room." The current requirement that System Signal Testers and System Signal Helpers share rooms, two to a twin-bedded room, complies with Article VI.

Carrier also points out that Rule 29 - "Expenses" provides that employees will be reimbursed for actual additional necessary expenses incurred for meals and lodging. While it contests that Rule 29 applies to floating System Signal Testers and their Helpers, Carrier insists that even if, arguendo, it does apply, the cost of a preferred single room does not constitute an "actual additional necessary expense." In support of its position, Carrier cites Third Division Awards 27674 and 20619.

A review of the Rules of the Agreement cited in this case indicates that they are neither unclear nor ambiguous with respect to the matter at hand. Carrier provided lodging for the System Signal Testers and System Signal Helpers as provided under amended Rule 59, and has not required that they be lodged more than two to a twin-bedded room. Moreover, in accordance with the principles enunciated in Award 27674, supra, Carrier gave Claimants ample notice of the new lodging policy. As noted by the Board in Award 20619, while the arrangement of single rooms may be preferable to Claimants, there is no support for the Organization's position that the additional cost of a single room is a "necessary expense" for which the Claimants should be reimbursed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Davis - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.