CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 502

Heard at Montreal, Tuesday, April 8th,1975

Concerning

CANADlAN NATIONAL RAlLWAY COMPANY

and

BROTHERHOOD OF MAlNTENANCE OF WAY EMPLOYEES

DISPUTE.

The Union claims the Company violated Rule 13.13 of Wage Agreement No. 10.3 by declining to pay the expenses of Work Equipment Operators J.L. Croteau for the period May 6 to May 31, 1974 and V. Dreifelds for the period June 13 to June 28, 1974. The claims are for $247 and $89.40 respectively.

JOINT STATEMENT OF lSSUE..

The grievors are regularly assigned Work Equipment Operators assigned to boarding cars. The grievors did not make use of the boarding cars assigned to them but rather, each day, travelled to and from their home residence by their owr private automobiles. The boarding cars Were located at various work sites depending on the assignment, i.e.,. Fort Union, Pickering and Whitby. The employees' reason for not making use of such cars was that, in their opinion, the cars did not constitute an acceptable accommodation. Because they considered such cars as unacceptable they considered the Company had assigned them away from such cars and thus violated Rule 13.13. They claimed meal and travel expenses.

| FOR THE EMPLOYEES: | FOR THE COMPANY. |
|---|---|
| (SGD.) P. A. LEGROS<br>SYSTEM FEDERATION<br>GENERAL CHAIRMAN | (SGD.) S. T. COOKE<br>ASSlSTANT<br>VICE-PRESIDENT -<br>LABOUR RELATIONS |

There appeared on behalf of the Company..

| | |
|---|---|
| W. H. Barton | System Labour Relations Officer, C.N.R., Montreal |
| A. D. Andrew | System Labour Relations officer, C.N.R., Montreal |
| J. L. LeCain | Reg. Supvr. Work Equipment - Operations, CNR, Toronto |

And on behalf of the Brotherhood..

| | |
|---|---|
| P. A. Legros | System Federation General Chairman, BMWE, OttaWa |

L. Boland General Chairman, B.M.W.E., London

V. Dreifelds - Local Chairman, B.M.W.E., Toronto
G. D. Robertson - Vice President, B.M.W.E., Ottawa

AWARD OF THE ARBlTRATOR

lt is acknowledged that the grievors were assigned to boarding cars.' if such cars were in fact provided, then the grievors would have no grounds for the claims they have made, their preference for living at home being their owr affair. The Company could not, however, avoid such claims by providing as "boarding cars" equipment in which employees could not, in all of the circumstances, reasonably be expected to live.

The issue in this case is one of fact: whether the Company did provide proper boarding cars. lt is suggested that the cars provided (of a type now being phased-out) were, when assigned to the grievors, in good condition bearing in mind the type of car they were, but that they fell lnto disrepair because the employees elected not to use them. The maintenance of such equipment is, it would seem to me, primarily a Company responsibility, although there may well also be some responsibility on the employees for whose use it is provided. Of course, if the employees themselves deliberately vandalized equipment, they could not then be heard to say it was unfit for use, and claim on the basis of inadequate equipment. But that is not this case, and if there is any disciplinary aspect to what has happened with respect to the equipment, it forms no part of the matter before me.

According to the evidence the equipment in question here had no toilet facilities, nor were any made available in reasonable proximity; there was no electric power and no hot water. The refrigerator could not be used because of the lack of power. On at least one of the cars the stove was in an unusable condition, and on at least one car there were no guard rails. On the evidence, and having regard only to the circumstances of the particular case, 1 conclude that the equipment provided for the grievors' use was not a proper boarding car or cars, and that, accordingly, the grievors were entitled to submit expense claims.

lt should be noted that this conclusion does not carry any implication as to the so-called "red fleet'' of perhaps rather antiquated boarding cars which, as noted above, is being phased out. Such cars, it is acknowledged, may with proper facilities provide reasonable accommodation. This case deals only with the particular accommodation provided for the grievors at the time material to this grievance.

This is not a case where employees were taken away from a boarding outfit to work temporarily elsewhere. Accordingly, Article 13.13 does not apply. lf, however (and it is an underlying assumption in this case) the circumstances of the grievors' work were such that a boarding car was to be provided, then the failure of the Company to provide proper equipment by way of a boarding car would call for the payment of the living allowance, in lieu of sleeping accommodation and meals, contemplated by the Memorandum of Agreement made between

the parties on December 4, 1973. ln the circumstances of this particular case, the provisions of the memorandum or of the collective agreement would not appear to justify a limitation of the payment to one for actual expenses and mileage, reasonable as that might seem on the facts of the case.

For the foregoing reasons, the grievances are allowed.

J. F. W. WEATHERHILL
ARBITRATOR