

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	
)	CASE NO. 2
vs.)	AWARD NO. 2
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier forced Gang 5X47 employe L. Cromer and Gang 6NP6 employe K. McDivitt to occupy the same lodging room beginning in September 2001 and continuing [System File 160704501/12(02-0056) CSX].**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants L. Cromer and K. McDivitt shall now be allowed a single occupy room.**

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Organization filed the instant claim by letter dated October 3, 2001, contending that the Carrier had violated the parties' June 1, 1999 Agreement by requiring Claimants, each assigned to a one-man gang, to share a motel room. The claim stated:

Appendix "G" provides language doing away with camp cars and placing Maintenance of Way Employees in motels, with a daily per diem for meals and provides for the current practice of June 1, 1999 to continue with respect to lodging.

June 1, 1999 the practice followed and agreed to by the Organization was double occupancy for gangs of more than one man with the Foreman, Welder and **single man gangs provided single occupancy.** (Emphasis added).

The above referenced practice was in place except (sic) for a single instance in December 1999. This violation was addressed by J.H. Wilson and me (Vice Chairman Freddie N. Simpson) (see my attached letter dated January 3, 2000 addressed to J.H. Wilson Director Employee Relations). .

Mr. Wilson and I were present at the bargaining table when the June 1, 1999 Agreement was negotiated. As you can readily see from the January 3, 2000 letter Claimants are entitled to single occupancy.

In the January 3, 2000 letter referenced in the claim, the Organization had stated, with respect to a lodging issue which had arisen concerning other Carrier employees, "We therefore agreed for the future, employees assigned to a one man gang would be housed single occupancy per room, in Corporate Lodging, and employees assigned to a gang of two (2) or more may be required to stay two (2) per room, in Corporate Lodging."

The Carrier, however, had, on January 20, 2000, responded to that letter as follows:

Your letter definitely does not reflect our understanding. Our position has not changed from the first time we discussed this matter . . . Corporate Lodging does not establish our policy regarding how many employees will be assigned to a room, and the only provision in the agreement regarding lodging is that no more than two employees will be required to occupy a room.

CSXT's position remains that we have the right to require up to two employees to occupy one room, and whether they are assigned to the same work force or not is absolutely irrelevant . . .

I apologize for any misunderstanding, but your letter does not accurately represent our conversations regarding this subject.

The record also reflects that on November 1, 1999, the Organization served a Section 6 Notice upon the Carrier, seeking to negotiate, among other items, that all employees working away from home receive single-occupancy lodging. There is no evidence of a resulting written agreement concerning this matter.

On November 28, 2001, the Carrier denied the instant claim, indicating that its investigation had disclosed that the employees were working in the same work group at the same location. The denial letter further stated:

The lodging agreement does not state that employees have to be on the same Force to stay two in a room. The Agreement states that Foreman (sic) are entitled to stay two in a room. Outstanding instructions from

Labor Relations state those employees other than Foreman must stay two to a room.

The Organization, by letter dated January 21, 2002, appealed to the Carrier's highest designated officer, and stated again that the appropriate Agreement language clearly provided that the practice in place on June 1, 1999 governed lodging and meals. The Organization also sent the Carrier 15 employee statements concerning Carrier lodging practices over many years. Twelve of the statements, mostly undated, contained the same language:

I am making known my opposition to CSX Transportations (sic) recent policy of bunking two employees per room in motels, especially when one of these employees is a machine operator.

* * *

A machine operator has the same paper work and time reports to do as a foreman. Besides the normal paper work he has inspection reports and service reports to be filled out daily and monthly as he is responsible for the maintenance of his machine, and needs privacy to do these reports.

Machine operators need to be alone in order to get the proper rest so they can perform their duties in the safest way possible. All employees do not keep the same hours, as some stay up later, and others rise earlier. Therefore I think for safety reasons alone that a machine operator should stay by himself.

Past practice has always been that foremen and machine operators always have a room to themselves. . . .

The Organization attached 16 additional such statements to its submission to this Board.

The Organization also attached three handwritten statements to its January 21, 2002 letter. Two included the following identical language, "The crane operators have always had their own camp cars. Over the last few years we have stayed in motels. The operator, like foreman, have gotten their own room. As of now the supervisor are (sic) making us double up in rooms. They are making different teams double up. The CLC letter even states men of more than 1 to a team double. We are a team of 1 man. It's always been in the past oprs have gotten own room . . . Teams of 1 man are suppose to be allotted a room." Another included the following language, "The crane operators have always roomed alone. . . CSX even states in a CLC letter, that gangs of more than 1 man will room 2 to a room. . . The foreman gets his own room, because he does his paperwork . . . The crane operator does the same things."

The Carrier again denied the claim, several other pieces of correspondence and a conference followed, and the matter ultimately came before this Board for adjudication.

Appendix G of the parties June 1, 1999 Agreement provides:

APPENDIX "G"

EXPENSES AWAY FROM HOME (Award of Arbitration Board No. 298 as modified by the parties)

Inasmuch as CSX Transportation, Inc. does not provide lodging in camp cars or other similar facilities, it has been the accepted practice for it to provide its employees lodging in motels and to provide the daily allowance for employees without cooks or cooking facilities provided for in Article 1, Section B(3) of the Award of Arbitration Board No. 298, as adjusted by the provisions of subsequent National Agreements, which is currently \$21.25. This amount will be subject to any future adjustments provided by National Agreements.

Travel time, lodging and other similar matters comprehended by the Award of Arbitration Board No. 298, have been addressed in the Schedule Agreement, or other appendices.

Article 1, Section A of Award of Arbitration Board No. 298 provides, in relevant part:

A. Lodging

1. If lodging is furnished by the railroad company, the camp cars or other lodging furnished shall include bed, mattress, pillow, bed linen, blanket, towels, soap, washing and toilet facilities.
2. Lodging facilities furnished by the railroad company shall be adequate for the purpose and maintained in a clean, healthful and sanitary condition.

A June 14, 1994 cover memo to the Carrier's Instructions for its Corporate Lodging Program includes the following Point #6: "On Gangs of more than one man, two employees will stay in each room, except that the foreman of the Gang will be entitled to a separate room."

The Organization asserts that this case involves the Carrier's arbitrary decision to abrogate the clear language of its Corporate Lodging Policy (CLC), which, the Organization states, reflects the historically accepted practice of allowing one-man gangs single occupancy lodging. The Organization urges that the practice is well documented on the property, through statements from employees establishing a 35-year pattern. Such a practice, the Organization states, has the same force and effect as any contract provision formally agreed to by the parties, as has been held in numerous awards. The

Organization asserts that it is undisputed that Claimants were each assigned to one-man gangs throughout the claim period, and, therefore, it is clear they should not have been required to share a room.

The Carrier contends that the Claimants' request for single-room lodging is bereft of any contractual, past practice or company policy support. The Carrier states that the instant situation is fully addressed within the four corners of the parties' agreement, as set forth in Appendix G and the Award of Arbitration Board No. 298. Thus, the Carrier states, there is no need to consider evidence of a past practice to clarify the contractual language.

Moreover, the Carrier contends, there is insufficient evidence to suggest the past practice asserted by the Organization. While the Organization produced statements signed by Carrier employees to support the supposed practice, the Carrier notes that they are largely identical, lack specifics such as dates and locations, and have no probative value. Moreover, the Carrier states, the Organization failed to produce any additional information when the Carrier challenged these boilerplate statements as insufficient during the on-property handling.

As for the its lodging policy, the Carrier states that the Organization relies upon a twisted and tortured reading of the language to support its desired result. The Carrier acknowledges that the policy does refer to "gangs," but, the Carrier states, that is simply a reference to groups of employees and there is nothing to establish that the term has its collective bargaining definition. The Carrier emphasizes, in repetition of its contentions made on the property, that it never committed to provide single-occupancy rooms for one-man gangs consolidated in a nearby geographic area. The Claimants, the Carrier points out, were in the same work group at the same location near Clinton, Iowa, and were provided double-occupancy lodging. There was, the Carrier concludes, no agreement, policy or practice requiring the Carrier to do otherwise, and the claim should be dismissed.

The Board has carefully reviewed the record in its entirety, and concludes that the record is insufficient to establish a violation in this matter. First, the contractual provision cited by the Organization, Appendix G to the parties June 1, 1999 Agreement, does not speak to the issue of how many employees may be lodged in one room. Nevertheless, the Organization states, the Carrier is bound by a long-standing, established practice, assertedly memorialized in the Carrier's lodging policy, which entitles members of one-man gangs to single room lodging. On this record, we cannot agree. First, we note, as argued by the Carrier, that the employee statements purporting to establish the practice are too vague, conclusionary and lacking in specific details to do so. In addition, the numerous identical statements are mostly appeals from the employees to receive the same treatment as the foremen, that is, single occupancy lodging at all times. To the extent the statements mention any "practice," it is that *machine operators* have received single-occupancy lodging. There is nothing speaking to differing lodging treatment for one and multiple-member gangs, except that the distinction is supported by the Carrier's corporate lodging policy.

To the extent that the Organization claims that the Carrier's lodging policy memorializes the asserted practice, we also cannot agree. First, the record demonstrates that the Carrier has steadfastly maintained that it never intended, nor agreed, that the policy could be interpreted as the Organization alleges. While the policy does state that employees on "gangs of more than one man" may be lodged two to a room, the language does not, on its face, clearly guarantee the converse, that is, that one-man gangs must, in all circumstances, be provided single room lodging. Moreover, given that the policy is an extra-contractual, non-negotiated document, we cannot assume, in the absence of clear evidence, that the term "gang" was intended to incorporate that term's collective bargaining definition, rather than a broader reference, as the Carrier asserts, to a more general grouping of employees.


For all of these reasons, we conclude that the record does not establish Claimants' entitlement to single room lodging, such that the Carrier's failure to provide such accommodation violated the parties' Agreement. The claim is therefore denied.

AWARD

Claim denied.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member


TIMOTHY KREKE
Organization Member

Dated this 10th day of October, 2008.

Oct. 10, 2008