

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 168**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-ROAN-03-10-SG-073)

Statement of Claim:

Claim on behalf of the members of the TS-26 Timber and Surfacing Gang requesting that they each be reimbursed for meals purchased after December 5, 2002, because they were not satisfied with the meals provided by the Carrier's food service.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

**AWARD**

After thoroughly reviewing and considering the record evidence including the parties' presentation, the Board finds that the claim should be disposed of as follows:

**BACKGROUND**

The case before the Board questions whether the Claimants are entitled to reimbursement for "any and all meals purchased after December 5, 2002." In support of this claim, the Organization asserted, in relevant part, that "the Carrier failed to provide the claimants with suitable, adequate meals and sanitary facilities while being required throughout the workweek to live away from home in camp cars, therefore requiring the claimants to obtain meals in restaurants", all in violation of Rule 34 of the Agreement. In addition, the Organization asserts that as a direct result of the unsanitary conditions attributed directly to the "cook's bathroom habits of not washing hands after visiting the 'Porto-John', . . . several employees are suffering from chronic diarrhea."

In his response to the instant claim, Chief Engineer Haroutunian noted in relevant part:

[Similar] complaints with respect to the conditions were investigated and found to be unsupported. In fact, with the exception of a couple of employees, the members of TS-26 continued to use the food service and have not expressed dissatisfaction with the food served to them. Even more significantly, these employees chose to follow the TS-26 onto Southern in November rather than exercise seniority elsewhere.

### DISCUSSION


In making a determination based on the facts herein, the Organization bears the burden of proof under the preponderance of the evidence standard. Accordingly, it is the Organization's burden to demonstrate that it is more likely than not that the record evidence supports their claim that the food served to the Claimants was substandard and that the lack of proper sanitary habits by the cook led to serious illness on behalf of a number of employees. These claims are serious and require more than an unsubstantiated assertion. Respectfully, upon review of the record evidence, the Board finds a lack of evidence to overcome the Carrier's response to the instant claim. In this regard, it is significant that following the General Division Engineer's response, the Claimants were unable to provide credible evidence to the contrary.

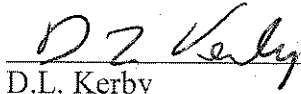
Given the foregoing, there is an insufficient basis in the record to support the Organization's claim.

### CONCLUSION

The claim is denied.

  
Dennis J. Campagna  
Chairman and Neutral Member

  
T.W. Kreke  
Organization Member

  
D.L. Kerby  
Carrier Member

DATED: March 31, 2008