Award No. 7660
Docket No. MW-7455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the agreement when it failed and refused to compensate Extra Gang Foremen George H. Whiteman and M. C. Maxon and Assistant Foreman Harry O. Fuller for time consumed in going to and from point of work during hours outside their regular daily assignments on August 9, 1951, and on dates subsequent thereto;

(2) The Carrier now pay the employes referred to in part (1) of this claim at their respective time and one-half rates for all time consumed in going to and from point of work during hours outside of the hours of their regular daily assignments on August 9, 1951 and on dates subsequent thereto.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains a labor camp at La Paz, Indiana, wherein extra gang laborers are furnished sleeping, eating, recreation and other housing accommodations. These extra gang laborers are transported from this camp to their daily work location by means of a bus rented to the Carrier by outside parties.

The Claimant employes are in charge of an extra gang in which the aforesaid laborers are employed. The Claimants however, do not reside in this labor camp but maintain their own private residence in or near La Paz, Indiana.

As was stated by the Employes in Docket MW-5710, and neither denied nor refuted by this Carrier:

"A condition of employment existed on this Carrier providing that Extra Gang Laborers will start and finish their daily work assignment at the work site, therefore, the Carrier assigned the Assistant Extra Gang Foreman to transport the men of his respective crew, from the headquarters to the work site."

However, this peculiar work condition is not applicable to foremen and assistant foremen of extra gangs as was expressly admitted by this same Carrier in Docket MW-5710.

(e) Employes performing service which requires them to leave their home station and remain away overnight will be paid at the straight time rate for all time traveling or waiting for transportation between the end of the regular working hours of one day and the beginning of the regular working hours of the following day except on rest days or holidays when such time will be paid at the overtime rate; provided that no compensation will be allowed when six or more continuous hours of lodging or sleeping car accommodations are available between 10:00 P. M. and 6:00 A. M.

(f) The preceding paragraphs of this rule do not apply to any travel on the part of regularly assigned relief employes necessary to get from point to point of their assignments. As to such travel (except wholly within terminals) free transportation, by railroad if available, will be furnished but, except as otherwise provided herein, they will not be allowed expenses or pay for time deadheading. Where there is no railroad service available, relief employes will be reimbursed for fares paid other public carriers. If neither railroad nor other public carrier is available, then relief employes will be allowed the same mileage rate as is allowed other employes if they elect to use their automobiles in such travel."

In their arguments on the property, the Employes relied specially on paragraph (c) of the rule quoted above. The Carrier desires to emphasize that the language appearing in Section (c) of the rule reads: "Employes required to travel **at the direction of the Management * * *"**. Obviously, the claimants did not fall within this category. The Carrier has previously demonstrated that the claimants at no time were required to report to the labor camp at LaPaz; neither were they "* * * required to travel at the direction of the Management * * *" from the labor camp to their designated assembling point in the transportation provided for the laborers by the Carrier. In the face of these facts, the Carrier submits the provisions of the "Travel Time Rule" can have no application to the instant case. To hold otherwise would be inconsistent with the established application of the rule.

Summarily, the issue in this case is very simple. The record conclusively shows the claimants' assembling point was properly designated. Such assembling point was located at a point other than the labor camp at LaPaz *and they were under no orders or instructions to report at the camp.* However, for their own convenience, they did report at the labor camp and utilized the transportation facilities provided by the Carrier for the occupants of the labor camp. The question to be decided, then, is whether or not any of the time consumed in traveling by the claimants from their point of residence to their properly designated assembling point, the tool house, is compensable within the purview of Rule 32 of the applicable Agreement. Obviously, it cannot be so interpreted. The Carrier contends the rule involved is very clear and cannot be subjected to any interpretation supporting a penalty wage claim of this nature.

On the basis of all that is contained herein, the Carrier respectfully requests the Division to find this claim as being without merit and to deny it accordingly.

OPINION OF BOARD: This claim is brought before the Board by the Organization in behalf of three named claimants, each of whom are classified as Extra Gang Foreman or Assistant Foreman, seeking payment at the punitive rate for all time spent going to and from point of work outside the assigned hours of their assignment.

The Organization asserts that the Respondent here violated Rules 13 and 32 (c) of the effective Agreement when it designated the labor camp at La Paz, Indiana, as the assembly point for the claimants rather than a tool house or outfit car as required by Rule 13, and likewise was in violation of Rule 32 (c) which specifically provides that all employes required to travel by various means (highway trucks) shall be considered at work rather than traveling.

It was asserted that these claimants were specifically instructed to travel by truck, and that in so doing, necessarily proceeded to and from their point of work outside the hours of their assignment. And further, that Rule 32 (c) applies to Laborers and not Foremen or Extra Gang Foremen.

The Respondent counters with the contention that the bulletin issued by it merely established headquarters as the tool box where the ballaster was set off between La Paz and Bremen and that the offer of free transportation to this point from the labor camp at La Paz in no way established the labor camp as the assembly point for the claimants who were classified as Foreman. It was further contended that none of the Foremen were instructed to report at La Paz or use the truck transportation available to them at that point (unless they desired). And lastly, that claimant Whiteman held a position that specifically designated the "assembly point at tool box" for him.

We cannot agree with the Organization that in designating the tool box where the ballaster was set out between La Paz and Bremen was a violation of Rule 13. We conclude that so far as this particular case is concerned, a tool box and tool house are synonymous and had the effect of making this point both headquarters and the assembly point for the employes within the meaning of Rule 13. Neither can we read into the bulletin that became effective on June 26, 1951, any requirement that the claimants were to report at La Paz and avail themselves of the truck transportation. We conclude, rather, that the use of such transportation was optional and for the use of the claimants only at their convenience. An examination of Award 5750, relied upon by the Organization, reveals widely divergent facts and circumstances from those present here. We cannot find that this Award (5750) is applicable here.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

That the Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.