Award No. 13994
Docket No. MW-14279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY 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 pay CTC Operator J. V. Shull for three and one-half (3½) hours of time expended while with a work train from 3:00 P. M. to 6:30 P. M. on January 24, 1962.

(2) The Carrier now allow CTC Operator J. V. Shull three and one-half (3½) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The facts in this case were fully set forth in the General Chairman's letter of claim presentation dated March 8, 1962, as follows:

"Morning of January 24, 1962, work extra No. 61 had instructions to handle CTC No. 8 and camp car B4500 from Richmond, Va. to Danville, Va., stopping at intermittent points for the operator of CTC No. 8 to pick up or unload track materials, etc.

Upon arriving at Keysville, Va., at approximately 3:00 P. M. CTC Operator J. V. Shull was advised by a carrier officer that he should tie down his machine, get off and ride camp car at the end of his eight hour tour of duty. Mr. Shull's time started at his designated assembling point, which was Richmond, Va., and was instructed that his time would end at his regular quitting time regardless of whether or not he had reached his designated assembling point at the end of tour of duty.

In accordance with a well established past practice and in compliance with scheduled rules, operator Shull showed on check roll 3½ hours overtime on duty beyond his regular quitting time before reaching his designated point, which was Danville, Va., where the machine and camp car was placed for the night.

No language of any of the above-quoted rules even implies that Operator Shull has a contract right to the compensation here demanded on his behalf.

Operator Shull had a regular assignment. He was paid for eight hours during the hours of his regular assignment. He was paid from 7:30 A. M. until 3:30 P. M. He was paid for a day's work, although a day's work was not, in fact, performed by him. He is not contractually entitled to overtime, because no overtime hours were worked; in fact, no work was performed by him while traveling in his camp car from Keysville to Dundee. He does not have a contract right to the compensation here demanded on his behalf by the Brotherhood.

Operator Shull was paid for the hours between the beginning and the release from duty, exclusive of the meal period, as provided in Rule 30(d). Rule 49 specifically bars payment for time not worked. It provides that no compensation will be allowed for work not performed. Thus, the claim and demand which the Brotherhood here attempts to assert is unsupported by the Agreement. In these circumstances, only a denial award can be made.

OPINION OF BOARD: Claimant was a crawler tractor crane operator. His assigned hours were 7:30 A. M. to 3:30 P. M., Monday through Friday with rest days on Saturday and Sunday. At 7:30 A. M. on Wednesday, January 24, 1962, he reported for work at Richmond, Virginia, as operator of crawler tractor crane No. 8 on a flat car moved by freight frain No. 61. Also moved by said freight train No. 61 was Camp Car No. B-4500 assigned to the operator of the crane, who was the Claimant. Freight train No. 61 moved the flat car and the camp car to several work areas. When it arrived at Keysville, Virginia, Claimant was advised that his work for the day was completed and that he should proceed to the camp car where he was to remain until it arrived at Dundee, Virginia. He followed instructions. The flat car carrying the crane and the camp car left Keysville at approximately 2:45 P. M. and arrived at Dundee at approximately 6:30 P. M. that day. Claimant was paid for eight hours at straight time from 7:30 A. M. to 3:30 P. M.

Petitioner contends that Claimant is entitled to additional 3½ hours pay at time and one-half his basic rate while riding with the work train (in the camp car) from 3:00 P. M. to 6:30 P. M., because Carrier violated Rule 32, which reads:

"RULE 32.

BEGINNING AND END OF WORK DAY

Employe's time will start upon leaving and end upon returning to designated assembling points for each class of employes."

It is the position of Petitioner that Claimant's "time started at his designated assembling point, which was Richmond, Va., and was instructed that his time would end at his regular quitting time regardless of whether or not he had reached his designated assembling point at the end of tour of duty." Claimant did not "return" to Richmond, Virginia that day. Rule 32 applies only when an employe leaves and returns to a designated assembly point. If Richmond, Virginia was the designated assembling point, Claimant did not return to it. He ended his actual work at Keysville and tied up for the day at Dundee.

Petitioner also argues that:

> "It has heretofore been recognized that operators of cranes and other equipment being handled by work trains or in local freights to pick up and unload track materials, etc., at various points along the line were on duty from their regular starting time or the time placed in such train and until their regular quitting time or until the time such train places their cranes or other equipment at a designated yard or siding, which is considered their assembling point."

Past practice may be considered as relevant evidence when the Agreement is ambiguous or when it gives meaning and intent to such Agreement. Rule 32 is not so ambiguous. The meaning and intent of the parties is clear and no past practice may be considered. Petitioner cites no other Rule in the Agreement to which such alleged past practice may apply. In the absence of any violation of the Agreement, no past practice is relevant. To give it credence would be to add another understanding to the Agreement which only the parties through negotiations can achieve. The Board has no power to add or subtract from the existing Agreement.

Notwithstanding this fundamental rule of contract construction, Petitioner's statement of past practice is a mere assertion. It is not evidence. There is no probative evidence in the record to support this assertion. In addition, Carrier denies that there was such a past practice.

While the allegations in the record are not as precise and as certain as they could be, it contains enough facts to justify the conclusion that Claimant's assembly point was the outfit or camp car and not Richmond, Virginia or Dundee.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1965.