Award No. 18033
Docket No. MW-18378

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC 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 the employes assigned to Maintenance Gang 228 for work performed in going to and from their work location and assembly point prior to and continuous with their regular assigned work period. (System file L-126-1177/4-P-290).

(2) Foreman D. D. Dodd and Laborers G. A. Lint, R. F. Wahlert, R. L. Wineinger, H. W. Wineinger and D. L. Knapp each be allowed pay at their respective time and one-half rates for all time expended outside of their regular assigned work period beginning on March 26, 1968, and for each day thereafter that the violation referred to within Part (1) of this claim continues to exist.

EMPLOYES' STATEMENT OF FACTS: The claimants are the foreman and members of Maintenance Gang 228 with assigned headquarters at Nevada, Iowa. Their regularly assigned work period extends from 7:30 A. M. to 4:30 P. M. (noon day meal period is from 12:00 noon to 1:00 P. M.).

Throughout the history of our agreement with this Carrier, the assembling point for section and/or maintenance gangs has been their headquarter's point. Their work day as well as their time has always started and ended at such assembling (headquarter) point in accordance with the provisions of Rule 31 reading:

"Employees' time will start and end at designated assembling point for each class of employees."

Whenever they have been required to leave their assembling point in advance of their regular assigned work period, or were returned thereto after the close of their work period, they were always paid at overtime rates for all time expended prior to and/or following and continuous with their regular assigned work period in accordance with Rule 24(a) which reads:

at its discretion. The assembly point is not fixed. The rule does not even remotely suggest such is the case or that some record of designation by negotiation or otherwise be maintained. You have to this date side-stepped the basic issues involved. You have provided us with no response whatever to the very pertinent awards and questions posed to you by my letter dated July 12, 1968, and September 24, 1968. There can be no question that in the cases before us, the employees are not being worked or performing duties by direction of management during the time periods of claim which would invoke the provisions of overtime Rule 24. On the contrary, the employees are travelling to the carrier designated assembly point (work site) in carrier furnished transportation at no coast to the employees. They are allowed travel time expenses as provided by Section II of Award 298, which is clearly applicable as set forth in our agreement dated March 29, 1968, and the employees are being properly paid for work performed in compliance with the provisions of the Agreement. At no time have we agreed to a fixed assembly point when establishing maintenance gangs or any other class of employees, nor was such agreement required or necessary. We have, however, agreed upon establishment of and changing of headquarters points.

"While Award 298 did not necessarily change existing rules, except where pertinent, it did provide for travel and travel allowances away from headquarters, where no such provisions existed before."

11. Attached herewith as Carrier Exhibit "C" is Interpretation No. 40 of Arbitration Board No. 98 covering their decision with respect to the "Question" posed in those submissions attached as Carrier Exhibits B1 and B2.

12. This dispute has its roots in Board of Award No. 298 covering travel time and expense options for maintenance of way employes on this property. Prior to the adoption of this Award on this property it was the position of the Carrier that Section II, Paragraph D provided that only travel time in excess of one (1) hour either prior to or subsequent to an employe's shift would entitle the employe to compensation. The Organization disputed this fact and contended that this did not apply as such. Accordingly, with the adoption of Award No. 298, as set forth in Memorandum of Agreement dated March 29, 1968 (See Carrier Exhibit "A"), Item (9) provided as follows:

"The Organization and the Carrier are in dispute with respect to the application of one hour provision of Section II, Paragraph 'D' of Award No. 298. This matter will be submitted to the appropriate tribunal for adjudication. In the meantime, Paragraph 'D' will be applied as the Carrier interprets its provisions."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants' regularly assigned work hours were from 7:30 A. M. to 4:30 P. M. with one hour off for lunch. Beginning on March 26, 1968, they were required to report thirty (30) minutes in advance at their headquarters so that they could be transported to their work site for 7:30 A. M. starting time. Similarly, they were held at the work

site until 4:30 P. M. and spent thirty (30) minutes traveling to their headquarter point.

Employes contend that Rule 31 is clear and unambiguous. It provides that "Employees' time will start and end at the designated assembling point." Therefore, Claimants are entitled to compensation for one (1) hour each day at the time and one-half rate because that time preceded and followed the Claimants' regular eight (8) hour work day. (Rule 24(a)).

Carrier argues (1) that this Board has no jurisdiction and that only Arbitration Board No. 298 has the power to adjudicate this dispute and (2) that the substantive issue was resolved by Arbitration Board No. 298 in Interpretation No. 40.

Item (9) of the Memorandum of Agreement dated March 29, 1968 provides that:

> "The Organization and the Carrier are in dispute with respect to the application of one hour provision of Section II, Paragraph 'D' of Award No. 298. This matter will be submitted to the appropriate tribunal for adjudication. In the meantime, Paragraph 'D' will be applied as the Carrier interprets its provisions."

Whatever dispute existed with respect "to the application of one hour provision of Section II of Paragraph 'D' of Award No. 298" was submitted to that Board and adjudicated in their Interpretation No. 40 on March 29, 1969. The claim here is for the application of that interpretation to the facts at hand. If Interpretation No. 40 invalidates Rule 31, then the issue is moot and this Board has no jurisdiction. If it does not invalidate that rule then this Board has jurisdiction to determine whether, upon the facts in this record, Carrier violated that rule and other pertinent and valid rules in the schedule agreement. In other words, if the substantive issue in this claim was resolved by Interpretation 40 then the claim is moot and this Board has no jurisdiction to review it.

The questions submitted to Arbitration Board No. 298 were the following:

> "1. It is the intent and purpose of Section II, paragraph D, of the Award:
>
> '1. That a Carrier may require regularly assigned employees (that is, those not in relief, extra, or temporary service) to be transported on their own time without pay between their designated assembling point and the site of work each day, in the performance of their regularly assigned daily duties, for as much as one hour each way, thus allowing them only eight hours pay at straight time rate for a tour of duty covering as much as ten hours?
>
> 2. To disturb the long standing application of the working agreement that the time of such regularly assigned employees begins and ends each day at designated assembling points?

3. To contemplate the establishment of a new assembling point each week for such regularly assigned employees for the purpose of avoiding the payment of time spent in being transported between the designated assembling point and the site on the work territory at which work is performed?"

Arbitration Board No. 298 replied thereto in Interpretation No. 40 as follows:

> "To the extent that this dispute may involve the interpretation of the schedule agreement, Arbitration Board No. 298 does not have jurisdiction; however, that portion of Section II-D providing for a one-hour lag before travel or waiting time starts applies only to employees in relief or extra service while traveling to or from a work location."

It is apparent that Arbitration Board No. 298 replied to the general questions submitted by the parties. That Board did not adjudicate this specific dispute. It did set out guide lines for the application of travel time and waiting time under Section II-D of its award. And they held that it applies "**only to employees in relief or extra service** while traveling to or from a work location." (Emphasis added). By evident implication that Board held that it did not apply to regularly assigned employes. Since the Claimants in this case are regularly assigned employes, it does not apply to them. Rule 31 of the schedule agreement is applicable. And the interpretation as well as the application of that rule to this controversy is within the jurisdiction of this Board.

Carrier contends that Interpretation No. 40 does not deal with the overtime rate of pay; only straight time pay is involved. True, that interpretation does not deal with the method of pay. But since a contract rule has been violated (Rule 31) the amount of pay is governed by other rules in the schedule agreement, and Rule 24(a) provides for that overtime rate.

There is no competent evidence in the record to support Carrier's position that it has been a past practice to pay no travel time on claims similar to those now before this Board. And even if there was such a past practice — and there is none — it may not be considered as valid in view of the clear and meaningful language in Rule 31. There is no ambiguity in that rule.

Carrier may not unilaterally issue instructions to pay straight time for travel time when the rules in the schedule agreement provides when the overtime rate shall be paid. The overtime rate is applicable here under Rule 24(a).

Carrier further argues that headquarters points and designated assembling points are not necessarily synonymous. Rule 31 uses the term "assembly point." Claimants were instructed to report to "headquarters" for transportation to work sites. For the purposes of this case assembly points and headquarters are synonymous.

For all of the reasons herein set forth, the Board concludes that the claim is valid.