NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20145

THIRD DIVISION Docket Number MW-20044

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when it failed and refused to allow B&B Foreman G. Day, Carpenter W. Root and Cook A. McNair travel time pay when their camp cars were moved from Tonquin, Oregon to Raymond, Washington on June 21, 22, 23 and 24, 1971 (System File 372 F/MW-16 9/11/71).

(2) B&B Foreman G. Day, Carpenter W. Root and Cook A. McNair each be allowed thirty-seven (37) hours of travel time pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Bridge and Building Crew #34 was to move from Tonquin, Oregon to Raymond, Washington, a distance of about 165 miles, on June 21, 1971. The foreman, Claimant Day, was instructed to select one member of his crew to remain with the camp cars and move with them to Raymond and the remainder of the crew was to travel to Raymond in the crew's Truck #97 ( a two-ton stake bed highway truck, Chevrolet 1960). On the 21st two members of the crew departed in Truck #97, one member remained with the outfit and the three Claimants travelled to Raymond in their own cars. The truck made the trip during the regular eight hour day on June 21 while the outfit arrived at about 10:00 P.M. on June 24th having consumed some thirty seven hours of travel time in addition to the regular eight hour days.

Petitioner raises a new argument in its submissions relating to members of the crew being required to stay behind to prepare the outfit cars for the trip. Carrier quite properly objects to this issue being injected into the dispute since it was not raised on the property. This contention, based on well established principles of this Board, will not be considered, since Carrier was not afforded an opportunity to respond on the property.

Petitioner claims that the truck provided for the movement of the crew was not suitable for transporting employes in the rear and hence under provisions of Rule 35-E the claim should be sustained. That Rule provides:

> "E. Each employe furnished means of transportation by the Company will be paid the amount of travel time computed at straight time rate from one work point to another which the conveyance on which transportation made available by the Company would take regardless of how any employe actually travels from one work point to another.

"Each employe who is not furnished means of transportation by the Company will be paid the amount of travel time computed at straight time rate from one work point to another which is consumed by the mobile lodging facilities in moving from one work point to another. If an employe's work point is changed during his absence from the work point on a rest day or holiday, he shall be paid any mileage he is required to travel to the new work point in excess of that required to return to his former work point. Waiting between transportation connections enroute will be considered traveling in the application of this rule."

Carrier maintains that the second paragraph of Rule 35-E is not applicable to this dispute since the crew was furnished transportation in the Truck described heretofor. Carrier further argues that any ruling with respect to the adequacy of the transportation furnished would in effect be an improper re-writing of the rules by this Board. The Organization, on the other hand refers to Interpretation No. 35 of Arbitration Board No. 298 which states:

"Question: Can Carrier require employes to ride in the back of a company truck, with tools and equipment from one work point to another and escape reimbursement to employes for the use of other forms of public transportation, or private automobile?

Answer : Section I-C-2 of the Award obviously contemplates the furnishing of reasonable and suitable transportation by the railroad company. Disputes such as that presented in this question involve factual findings as to what constitutes reasonable and suitable transportation, and should be handled in the same fashion as other grievances under the Collective Bargaining Agreement and under the Railway Labor Act."

It is our judgment that it is appropriate under the above ruling for this Board to make a determination as to whether or not the seating in the rear of Truck #97 constituted reasonable and suitable transportation.

Carrier argues that Truck #97 was a reasonable and suitable means of transportation for the trip to Raymond for the Crew. Carrier claims that three employes could sit in the cab and that the bench under the partial canopy in back was comfortable for two of the Claimants to ride on it. Carrier states further that this truck was similar to many other trucks along the right-of-way and was used by this crew frequently for trips to and from work sites.

The Organization urges that a 2" X 12" plank over a tool box in the partially open rear of the truck is inadequate for the 165 mile trip as suitable transportation, even though it might be satisfactory for daily movements between headquarters and work sites. Furthermore, Petitioner states that Carrier has introduced no evidence indicating that this mode and type of transportation is customary for movements of this distance.

The record contains pictures and descriptions of the rear of Truck #97; we conclude that the bench in the rear is not suitable transportation for the move of Gang #34. However we note that the record contains the unrefuted contention that three members of the crew could have travelled in the cab of the truck, whereas only two members of the crew availed themselves of the cab. For this reason we shall hold that only two of the Claimants may have their Claim sustained and we direct Petitioner to make the determination as to which employes shall benefit.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was violated.

A W A R D

Claim sustained as to two Claimants only, as provided in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Panbe
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1974.