

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 22489
Docket **Number** W-22330

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employees**
(The Illinois Central Gulf Railroad)

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

(1) **The Carrier** violated the **Agreement** when it **required** the members of Gangs **204, 206 and 203** and the two Group B machine operators assigned to **PR-21 and PR-51** to start and end their days' work at a designated **assembly point** other than **tool houses, station buildings** or shop8 (**System File La-150-T-76/134-838-633 Case No. 1068 MofW**).

(2) **The claimants** each be **allowed** thirty **(30) minutes** of pay at **their** respective time and **one-half** rates for each work day beginning **August 9, 1976** and continuing until the violation, referred to in **Part (1)** hereof is corrected."

OPINION OF BOARD: Starting on **August 9, 1976**, Carrier directed Claimant8 to **assemble** at a **stone-surfaced** area within **Dtttrehan Yard** concerning work on a project involving the rebuilding of that yard. As a result the Claimants **assert** a violation of **Rule 22(c)**:

"Time for each class of employees will start and end at designated assembling points such as stationary tool houses, station buildings and shops."

The **Employes** argue that **Rule 22(c)** obviously mandate8 a **meeting point** other than a **stone-surfaced area** and they **assert** that the phrase "**such as**" permit8 no **contrary interpretation**. Carrier **disagrees**, and **insists** that the rule merely intended that a **meeting point** be provided which had **off-street parking** and water available.

In it8 **Submission** here, Carrier **attempts** to **present** Certain factual **information** as a **basis** for it8 **interpretation** of the nib.

That factual information should have been presented while the matter was under review on the property. Although Carrier did state, at that level, that it relied upon past practice no evidence of said practice was properly permitted.

We feel that the rule requires more than a parking area with ice and water availability, as argued by the Carrier. The "such as" inclusions are all structures. If a paved area is all that is required, then the rule would hardly have been written in the terms cited. We feel that, for whatever reason, the parties agreed to an assembly point of a different character than provided in this record and thus Rule 22(c) was violated.

The monetary aspect of the claim is indeed troublesome. In the initial claim the Organization mentioned two assembly points which satisfied Rule 22(c) five (5) and seven (7) miles away (one north and one south of Destrehan Yard) and requested thirty (30) minutes overtime pay for each day. In the December 6, 1976 denial Carrier pointed out that the men lost no money as a result of starting at the yard. In its presentation to the Board, the Organization argues that compliance with the rule may have resulted in different hours and reminds us that we should enforce Awards with appropriate findings of damages.

This author is no stranger to the entire question of damages in this industry. But, we have consistently refused to award damages which were speculative. The thirty (30) minute concept - at time and one-half - is, to us, speculative and not based on proved facts. But the fact remains that assembling at a proper location may very well have altered time of attendance so that some monetary award is proper. We will award a daily payment of fifteen (15) minutes at overtime rates.

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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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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 to the extent indicated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1979.