

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 22708
Docket Number **MW-22606**

John J. **Mangan**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Seaboard Coast Line Railroad Company

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

(1) The Carrier violated the Agreement **when** it refused to **allow** the members of System Grading Force No. 8666 necessary actual expenses and travel-time for the period extending from May 10, **1976** through October 10, 1976 **/System File C-4 (8-d)-SGF/12-8(77-16) Cl 12-2/**.

(2) Because **of** the aforesaid violation, the **employees named** below shall be reimbursed for the actual necessary expense incurred and shall be allowed travel time during the period May 10, 1976 through October 10, 1976.

Lead Machine operator O. **B. Davis** - Meals, \$255.00;
Automobile Mileage, \$549.00; and 106 hours travel time.

Machine Operator 3. **W. Whittington** - Lodging, \$486.00;
Meals, \$680.00; Automobile Mileage, \$96.00; and 20 hours
travel time.

Machine Operator R. Drew - Lodging, \$220.00; Meals, \$680.00;
Automobile Mileage, \$234.24; and 44.8 hours travel time.

Machine Operator D. **G. Lee** - Lodging, \$170.00; Meals, \$544.00;
Automobile Mileage, \$167.04; and 32.8 hours travel time.

Machine Operator **W. H. Whiddon** - **Lodging**, \$170.00; Meals,
\$544.00; Automobile Mileage, **\$167.04**; and 32.8 hours travel time.

Machine operator B. B. Sanders - Lodging, \$220.00; **Meals**,
\$680.00; Automobile Mileage, \$45.44, and 8.8 hours travel time.

Machine Operator R. D. **Brower** - Lodging, \$765.00; Meals, \$680.00.

Machine Operator **C. S. Wood** - Lodging, \$324.00; **Meals**, \$288.00.

Oiler **J. Olliff** - Lodging, \$220.00; Meals, \$680.00;
Automobile Mileage, \$45.44; and 8.8 hours travel time,

"Machine Operator D. **R.** Watson - Lodging, \$80.00; Meals, \$270.00; Automobile Mileage, \$15.36; and 3.2 hours travel time.

Oiler J. M. **Holden - Lodging**, \$100.00; Meals, \$320.00; Automobile Mileage, \$22.40; and 4 hours travel time.

Machine **Operator** W. **J.** Dills - Lodging, \$504.00; Meals, \$448.00.

Machine operator **J. M.** Prescott - Lodging, \$110.00; Meals, \$352.00; Automobile Mileage, \$21.12; **and 4.4** hours travel time.

Machine Operator C. J. **Shearin - Lodging**, \$100.00; Meals, \$320.00; Automobile Mileage, \$19.20; and 4 hours travel time."

OPINION OF BOARD: From **our** review of **the** record in this case and in consideration of the pleadings of the respective parties, certain undisputed facts emerge; namely:

1. The provisions and requirements of the Award of Arbitration Board No. 298 (National Mediation Board Case No. A-7948) have been incorporated **into** the negotiated **Rules** Agreement between the parties.
2. Prior to February, 1975 there was in existence **on** Carrier's property a System Grading Force floating gang with camp cars identified as No. 8666 which was abolished in February, 1975.
3. By bulletin notice dated April 9, 1976 a gang identified as System Grading Force No. 8666 was advertised with a fixed headquarters at Acme, North Carolina.
4. This fixed headquarters gang completed their assigned construction project and was abolished **on** October 7, 1976.
5. Effective October 11, 1976, System Grading Force No. 8666 was established as a floating gang with camp cars at Laurel Hill, North Carolina and first worked at **Elmore**, North Carolina.
6. The individual claims which are the subject of this dispute **were** thereafter initiated by letter dated November 30, 1976,

The record **in** this case further reflects **that** when the **authoriza-**
tion for the **new** construction work at Acme, North Carolina was received,
the entire project was discussed with **the** organization representatives
and no objections were voiced relative to **the** planned creation of a fixed
headquarters gang. Subsequently, when the gang was bulletined **on** April 9,
1976, there was a question raised relative to the absence of a cook
position on **the** advertising bulletin, whereupon the representative was
again advised that this was a fixed headquarters gang which did not require
a cook assignment. No further objection or complaint was received relative
to this gang's assignment until after it was abolished in October, 1976.

Petitioner argues that Carrier **has** violated the respective
provisions of **Rules** 20(e), 32, 35 and 36 each of which are derived directly
from the Award of Arbitration Board No. 298, with particular reference to
Interpretation No. 12 of Arbitration Award No. 298 which provides in
pertinent part as follows:

"QUESTION: Carrier practice over a period of **many** years
has been **to** provide camp cars for gangs but camp car rules
in effect do not make it mandatory that cars be provided.
Employees assigned to such gang are recruited from an entire
seniority district and work away from home while assigned
to the gang.

"May Carrier discontinue providing camp cars and escape
payment under I-A-3?

" * * * * *

"**An employee** cannot be transferred from coverage of Section I
into Section II merely by the discontinuance of camp **cars**
and/or the designation of a headquarters point.

"In applying the foregoing **principles** and guidelines to
the specific question at issue here, it is clear that
the **employees** are in a type of service contemplated within
the coverage of Section I. The Carrier **may** discontinue
providing camp cars but **my** not escape payments under
Section I except in locations where the **men** report for
duty at a fixed point which remains the same point through-
out a period of 12 months or **more**."

Rules 20(e), 32, 35 and 36 are substantially - if not completely -
the **same** as Sections I and II of the Award of Arbitration Board No. 293.

Carrier defends their actions in this case on the basis that the gang involved was established with a fixed headquarters for a specific construction project and for **no other** purpose; that, **upon** completion of the specific project, the floating **gang** was established to perform work of a continuing, **progressive** nature; and, that camp cars were thereafter furnished to the floating gang as provided for **in** the **Rules** Agreement.

In addition, Carrier argues that inasmuch as the project at Acme, North Carolina was discussed in considerable detail with the organization's representatives prior to the creation of the fixed headquarters gang and **no** substantial objections thereto were voiced, the **employees** are now estopped **from** advancing the **type** of claims outlined **in** the subject of this dispute. We find this argument persuasive if not convincing.

It does not appear from this record that Carrier was attempting to circumvent any of the provisions and/or requirements of the above mentioned **Rules** or Interpretation when they established the fixed **head-quarters** gang at Acme, North Carolina. It **may have** indeed been unfortunate that Carrier used for identification purposes the same **name** and number for the fixed headquarters gang as had been previously used and was subsequently used for a floating camp car gang. However, this poor choice of numbers did not cause the **Rules** Agreement to be violated.

There simply has been **no** showing **in** this case that the **employees** used were by **nature** of the work here involved the type of **employees** identified in the above mentioned **Rules**. The **Rules** Agreement has not been violated and we must, therefore, deny these claims.

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;

That this Division of the Adjustment Board has jurisdiction over the dispute **involved** herein; and

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST : *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.