RATIONAL RAILROAD ADJUSTMENT 30AP.D

Award Number 24032
THIRD DIVISION Docket Number MW-23965

T. Page Sharp, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Joint Texas Division of Chicago, Rock Island and
(Pacific Railroad company and
(The Fort Worth and Denver Railway Company

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

(1) (a) The Agreement was violated when the Carrier failed and refused to allow the members of B&B Gang No. 1 time for traveling between their headquarters point (Corsicana) and Tomball before their assigned working hours on November 19, 1979

and

(b) the Agreement was further violated when the claimants were not paid mileage allowance for the use of their personal automobiles therefor (System File B-1-80).

(2) As a consequence of the aforesaid violations, Messrs. G. A. Beeton, C. E. Crumpton, P. H. Kindle, J. D. Lewis, A. C. Mullican and M. A. Whisenant each be allowed six (6) hours of pay at their respective straight-time rates and mileage allowance (180 miles at the prevailing rate per mile)."

OPINION OF BOARD: Six members of B & B Gang No. 1 utilized their personal automobiles to travel to Tomball, Texas from their headquarters point at Corsicana, Texas, a distance of 180 miles. The gang had been directed by the Qrrier to report to work at Tomball on November 19, 1979. Carrier has refused to pay claimants for the hours spent traveling and for the miles traveled on the grounds that no rule supports the claims.

In its submission Carrier states that transportation, a company truck, was furnished and that the employes elected to utilize their personal vehicles instead of traveling in the truck. The record below is essentially devoid of any details concerning whether or not transportation was furnished by the Carrier. There is, however, a letter from tine General Chairman of Petitioner to the Read Timekeeper asking for pay and mileage which reads in pertinent part:

"On November 19, 1979 the B&B Gang was instructed to report for work at To&all, Texas to repair and install stringers in Bridge No. 7662, the Carrier paid for their meal and lodging during the work days they were assigned to work at Tomball, Texas instead of their regular headquarters point, Corsicana, Texas, in accordance with Rule 24 of the Agreement, however, Carrier refused to comply with Rule 23 and 21 of the Agreement and refused to allow mileage at the prevailing rate on travel allowance to and from their headquarters point when these expenses were submitted at the conclusion of the work January 4, 1980."

An Assistant Superintendent of Carrier responded for the timekeeper and denied the claim because of "lack of rule or agreement support."

The letter from the General Chairman states that the employes were to report to work at Tomball, Texas, on November 19, 1979. Taken literally this must be interpreted as a direction to show for work in person at Tomball. If the Carrier had intended for the employes to report to work at Corsicana to begin their day and be transported by company truck to Tomball, it should have so stated. If indeed it did so state, this fact should have been stated in the denial. Perhaps the Carrier intended to Say that no rule had been violated because transportation bad been furnished and pursuant to Rule 23(d) no mileage payment would be warranted. This Board cannot speculate on the defense of the Carrier. In the record before us only the uncontroverted letter of the General Chairman is evidence. The explicit assertion of company furnished transportation only was made in the submission and cannot be considered as evidence by the Board. The uncontroverted statement submitted by Petitioner is the sole evidence on this matter before the Board.

Rule 23(a) required *payment* for actual time spent in transit at pro rata rates. The only evidence of actual time is contained in the General Chairman's letter and is stated to be six hours per employe. Rule 23 governs the mileage payment for the 80 miles..

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November 1982.