

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26205  
Docket Number MW-26103

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Chicago, Milwaukee, St. Paul 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** Machine **Operator** M. G. **Connell** for work **performed** in going to and **from** his **work** location and assembly point prior to, following and **continuous** with his regular assigned **work** period (System File C #10-83/D-2606).

(2) Machine **Operator** M. G. **Connell** shall be allowed pay at his time and one-half rate for all time expended outside of his regular assigned **work** period on February 8, 9, 10, 11, 14 and 15, 1983."

OPINION OF BOARD: A Pay Claim was filed by the **Local Chairman** on March 7, 1983 on behalf of the Claimant. **The** Claim alleges that the Carrier was in violation of **Rule 26(C)(5)** of the **Agreement** on various dates in February of 1983, as outlined in the Statement of Claim, because the Carrier failed to pay the Claimant for travel time **from** his motel **room** to the crane which he operated on the Carrier's tracks at various points near the towns of **Chillicothe, Braymer, Trenton and Loreda, Missouri.**

**The** instant Claim centers on the proper interpretation to be given to the Claimant's designated assembling point according to the Agreement. As petitioner the burden of proof rests with the Claimant to prove, by means of substantial evidence, that the assembling points were his motel **rooms** and not the crane he operated on the days in question (see Second Division Awards 5526, 6054; Fourth Division Awards ~~3379, 3482~~ PLB 3696, Award 1).

After the Claim was denied on property the Organization argued that not only was the Carrier in violation of Rule **26(C)(5)**, but that it was also in violation of provisions of **Rules 21 and 24(a).** **These Rules** read, in pertinent part, as follows:

"Rule 21: **Employees'** time will start and end at designated assembling points for each class of **employees**, except as specified in Rule 26...."

"Rule 24(a): **Time worked** preceding or following and continuous with a regularly assigned eight (8) hour **workperiod** shall be **computed** on actual minute basis and paid for at time and one-half rates...."

"Rule 26(c)(5): The designated assembling point of machine operators who are away from their outfit and not able to return the same day or who have no outfit cars, and who must obtain lodging, the nearest available suitable lodging facility to the machine operator's work point (machine location) will be considered his nearest designated assembling point."

The denial of the Claim on property by the Carrier was done on the basis of the following arguments. First of all, according to the Carrier, Rule 26(C)(5) addresses the issue of mileage reimbursement, and not the issue of payment for traveling time. Secondly, the Carrier argues, there is no past practice on the property to support the interpretation of Rule 26 as proposed by the Claimant. The Carrier cites its Circular No. 1418 of May 28, 1974 to support its position. That Circular reads, in pertinent part:

"Rule 26C(5) provides the reimbursement of car mileage to employees who are willing and authorized to use their personal vehicles in the absence of transportation furnished by the railroad between their designated assembling point and work point and return, at the rate of 9 ¢ per mile. This they can claim on their time sheets under pay code 65 with an explanation for the mileage claimed."

This Circular clearly references mileage and not payment for time while accumulating such mileage. Further, the Carrier provides, in the record, a statement from the Roadmaster who states that the Claimant's assembling points on the dates in question were "... his machine location." The Carrier also provides a notarized statement by the Chief Clerk - Supt. Work, Equipment and Track Welding who states the following:

"Since my appointment (in 1971)...it has never been the practice of allowing travel time to crane and dozer operators from lodging to job site and return. The position being that the crane or dozer operator's time commences when he reaches his assembly point, namely the machine to which he is assigned."

On the basis of evidence of record, the instant Claim cannot be sustained. Such conclusion is consistent with earlier Third Division Award 23317. The facts relative to that case are on point with the instant one. It is true that more recent Third Division Award 23893 did sustain a claim comparable to the instant one. The Board has studied that Award for its possible precedential value. In that case, however, the Carrier failed to provide sufficient evidence to show where the Claimants' designated assembling points were. Such does not characterize the instant case.

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

~~That~~ the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of ~~Third~~ Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 12th day of ~~December~~ 1986.