

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company (Northern Region)

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 Messrs. R. Cotto, F. Figueroa, Jr., M. Diaz, F. Cruz, T. Haff, B. Glaspy, B. Blackburn, L. Mulero, H. Cano, P. Bitler, A. Gallarzo, A. Mattox, M. Cruz, M. Hernandez, G. Carrera, J. Blanco, M. Ramez, M. Ramirez, H. Diaz, F. Alarcon, G. Chaldez, J. Carrero, V. Torres, A. Diaz, A. Velazquez, J. Studt, T. Velazquez, R. Sheffer, A. Herrera, M. Buss, R. Halls, J. Kimble, J. Maycott, P. Seath, J. Gonyon, H. Nelson, E. Ritchie for the overtime service they performed from 2:30 P.M. to 7:30 P.M. on June 27, 1984 (System File C-TC-2160(a)/MG-4841).

(2) The Claimants listed in Part (1) hereof shall each be allowed five (5) hours of pay at their respective time and one-half rates."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On June 27, 1984, the Large Tie Unit was moved from Port Huron, Michigan. The record indicates that the force was notified that their new headquarters was to be Sebewaing, Michigan. The force reported for work at 6:00 AM at Port Huron and was transported by the Carrier to Sebewaing. There is no dispute that they arrived at Sebewaing at 2:30 PM and found no camp cars waiting for them. The Production Supervisor ended their day at 2:30 PM allowing them a lodging allowance under the Agreement as the camp cars had not arrived.

By letter of August 13, 1984, the Organization filed a time claim on behalf of all members of the force, in that they were not paid continuously until the camp cars arrived at 7:30 PM. The Organization argues that Carrier violated Rule 28 which states:

"RULE 28 BEGINNING AND END OF DAY

Employees' time will start and end at designated tool houses, camp cars or shops, except employees not housed in camp cars, whose time will start and end at designated locations which shall not be changed without first giving thirty-six (36) hours' notice." (emphasis added)

It is the Carrier's position that Claimants received proper notice that their headquarters was to be changed, received eight hours pay to the time they arrived at Sebewaing and a lodging allowance since the camp cars were not there. Our review of the Agreement finds that the allowance was paid under Rule 51 which states in pertinent part:

"RULE 51 CAMP CARS

(D) For employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars..., if lodging is not furnished by the Railway Company, the employee shall be reimbursed for the actual reasonable expense of such lodging..."

It is the Carrier's position that there has been no violation of any part of the Agreement. The Carrier argues that Rule 28 does not require payment "at the overtime rate account waiting for their camp cars."

The Board finds that the Organization's position fails. It is clear from Rule 28 that the designated beginning and end of the employees day is the camp car. It is clear that such must be provided by the Carrier. If, as in the instant case, the Carrier fails to provide a camp car, the parties have negotiated a reimbursed expense which was paid by the Carrier herein. We find no evidence of record or from the Agreement as a whole that the parties intended to require the Carrier to pay overtime for any extended time until the camp cars arrived. We find no such Rule which requires this Carrier action.

Unlike Third Division Award 2453 wherein the parties agreed under their Rules that payment was due, no agreement exists herein under these instant Rules. This Board finds that under these circumstances Carrier's use of Rule 51 was correct as lodging was not furnished. While in a theoretical sense the Carrier "furnished" lodging, it was clearly unavailable for use. It was neither handy nor made available such as would constitute the meaning of being provided or furnished. As such, the Claim must be denied.

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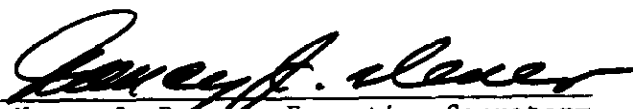
Award No. 27192
Docket No. MW-26729
88-3-85-3-486

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.