

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union 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 the members of System Track Gangs 806, 807, 1827 and 832 and Roadway Equipment Operators D. D. Dickinson, G. G. Pischel and C. D. Stueben for travel time in connection with moves made on certain dates between May 16, 1984 and October 15, 1984 (System Files M-74/013-210-36; M-77/013-210-36; M-81/013-210-36 and M-82/013-210-36).

(2) The employees assigned to System Track Gangs 806 and 807 on September 4, 7, 19, 20 and October 10, 1984, shall be compensated for a total of fifty-four (54) hours each at their respective straight time rates; Claimants M. J. Germer, R. L. O'Neil, J. C. Gruber, R. D. Flanagan, R. L. Britt, M. S. Anglin, R. G. Schuyler, D. G. Swanek, J. C. Rivera, G. L. Keaty and R. S. Mostek (System Track Gang 1827) shall be compensated for a total of five and one-half (5 1/2) hour each at their respective straight time rates; Claimants B. A. Hirschburnner, B. D. Gamble, J. L. Woita, J. Gonzales, L. Shields, G. T. Thomas, W. R. Nelson, Jr., R. L. Nielson, P. Smith, G. A. Hinker, E. Thomas, S. R. Silos, D. L. Wengler, D. J. Orender, D. S. Middleton, V. L. Warren, S. G. Gunderson, R. L. Paul, S. C. Haley, M. A. Silos, J. Madrano, C. Chie, H. Thompson, J. Maize, M. E. Cynova, W. J. Twyman, T. L. Bogenrief and G. Romig (System Track Gang 832) shall be compensated for a total of twenty-two (22) hours each at their respective straight time rates and Claimants D. D. Dickinson, G. G. Pischel and C. D. Stueben shall be compensated for a total of fifty-four (54) hours each at their respective straight time rates because of the violations referred to in Part (1) hereof."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 the dates this dispute arose, the Claimants were regularly assigned or working with System Gangs X806, X807, X1827 or X832, which were headquartered in outfits.

The members of System Gangs X806 and X807, Claimants D. D. Dickinson, G. G. Pischel and C. D. Stueben, were required by the Carrier to expend travel time when their outfit was moved from one work point to another outside their regularly assigned hours as follows:

<u>Date</u>	<u>Location</u>	<u>Miles</u>
	from to	
5-16-84	Laramie, Wy. Medicine Bow, Wy.	57
5-22-84	Medicine Bow Walcott, Wy.	39
5-25-84	Walcott, Wy. Rawlins, Wy.	23
6-1-84	Rawlins Riner, Wy.	18
6-8-84	Riner Wamsutter, Wy.	24
6-12-84	Wamsutter Rock Springs, Wy.	78
6-14-84	Rock Springs Granger, Wy.	45
6-20-84	Granger Bridger, Wy.	28
6-28-84	Bridger Altamont, Wy.	19
7-3-84	Altamont Evanston, Wy.	13
7-16-84	Evanston Echo, Ut.	35
7-24-84	Echo, Ut. Hammett, Id.	343
8-3-84	Hammett, Id. Rock Island, Or.	150
8-14-84	Rock Island Portland, Or.	396
9-4-84	Portland Briggs	103
9-7-84	Briggs, Or. Nephi, Ut.	867
9-19-84	Nephi Paxley, Ut.	31
9-20-84	Paxley, Ut. Lynndyl, Ut.	15
10-5-84	Lynndyl, Ut. Delphos, Ks.	1,100

Claimants M. J. Germer, R. L. O'Neil, J. C. Gruber, R. D. Flanagan, R. L. Britt, M. S. Anglin, R. G. Schuyler, D. G. Swanek, J. C. Rivera, G. L. Keaty and R. S. Mostek were required to expend travel time when their outfit was moved from Frankfort, Kansas, to Elgin, Oregon, outside their regularly assigned hours on October 15, 1984.

Claimants B. A. Hirschburnner, B. D. Gamble, J. L. Woita, J. Gonzales, L. Shields, C. T. Thomas, W. R. Nelson, Jr., R. R. Nielson, P. Smith, G. A. Hinker, E. Thomas, S. R. Silos, D. L. Wengler, D. J. Orender, D. S. Middleton, V. L. Warren, S. G. Gunderson, R. L. Paul, S. C. Haley, M. A. Silos, J. Madrano, C. Chie, H. Thompson, J. Maize, M. E. Cynova, W. J. Twyman, T. L. Bogenrief and C. Romig were required to expend travel time when their outfit was moved from Solomon, Kansas, to Plainville, Kansas, outside of their regularly assigned hours on September 27, 1984.

The Organization contends that Claimants were not compensated for travel time as required by Rule 36, Section 2, which reads:

"RULE 36. TRAVEL SERVICE

Section 2 - Change of Work Location - Outfit Service:

(a) Employees assigned with outfits as head-quarters, except as provided in Sections 1, 3, 4 and 5, shall be paid for time spent traveling when moves are made from one work point to another during the hours of the employee's regular assignment, including waiting time enroute, the same as for time worked.

(b) In lieu of pay for time spent traveling when moves are made from one work point to another outside of regularly assigned hours, or on a rest day or holiday, including waiting time enroute, employees will be paid travel time at their prorata rate computed on the basis of forty (40) miles per hour for normal traveled road miles between the work location from which the move commenced and the new work location.

In computing time under this rule, fraction of less than one-half hour shall be dropped and one-half or more shall be counted as an hour."

The Organization argues that Rule 36, Section 2, specifically stipulates that employees assigned with outfits as headquarters, except as provided in Sections 1, 3, 4 and 5, shall be paid for time spent traveling when moves are made from one work point to another outside of regularly assigned hours at their pro rata rate computed on the basis of forty (40) miles per hour for normal traveled road miles between the work location from which the move commenced and the new work location. The exceptions thereto have no application here, the Organization maintains. Moreover, it is a well established principle of contract construction that where one or more exceptions to a provision are expressed, no other or further exception will be implied, and that principle applies here, according to the Organization.

Carrier contends that Rule 36, Section 3 of the current Agreement pertains to Division Extra Gangs and that it has historically applied this Rule when changing division gang work locations. That language reads as follows:

"Section 3 - Extra Gang Assignment - Traveling In or
With Outfit Cars:

(a) Employees assigned to outfit cars which are considered their headquarters will be compensated as follows when their outfit cars are moved on or off their assigned seniority district whether they ride the outfit cars or use other means of transportation to the location where outfit cars are being moved.

(b) When a move occurs on a regular work day, employees involved will be allowed straight time for any portion of the move which occurs during their regular assigned hours.

(c) When a move occurs on a rest day, employees involved who performed compensated service on the work days immediately preceding and following such rest day, will be allowed straight time on the basis of one hour for each 40 miles or fraction thereof for any portion of the move which occurs during hours established for work periods on other days. The maximum time allowance under this Section (c) shall be 8 hours per day.

(d) As pertains to employees using others means of transportation to the location where outfit cars are being moved, in 'case outfits are diverted, or work performed enroute, no allowance will be made for any time lost.

(e) In computing time under this rule, fraction of less than one-half hour shall be dropped and one-half hour or more shall be counted as an hour."

Carrier emphasizes that for the past 17 years, since the inception of the Rule, all division and system extra gang employees have been compensated under the provisions of Section 3 of Rule 36 for any and all travel service. In the Carrier's view, the Organization is attempting here to secure through the claim process what it has been unsuccessful in obtaining at the bargaining table.

Carrier further alleges that the claim is improper and vague and, therefore, defective. We have reviewed the claim as it was presented and processed on the property and do not find Carrier's arguments in that regard to be well-founded.

What is clear, however, is that there are two recent precedent Awards which have considered this same issue and which have reached divergent results. In Public Law Board 4219, Case No. 4, the Board denied the claim of system tie gang employees seeking compensation for travel time to a new work site and for time spent waiting for their outfit cars to arrive. The Board concluded therein that the language of Section 3, Rule 36 was ambiguous because it was unclear whether the reference to "seniority districts" meant seniority groups in a general sense or seniority districts. Given its finding that there was ambiguity in the language, the Board looked to past practice and found that Carrier had consistently denied similar claims under Section 3 in the past. On that basis, the claim was denied. Carrier argues that the same reasoning applies here and that this prior Award should be considered res judicata.

A contrary conclusion was reached by Third Division Award 26818. Therein, the Board concluded:

" . . . Rule 36, Section 2 (b) provides for compensation for 'time spent traveling when moves are made from one work point to another outside of regularly assigned hours . . . including waiting time enroute Rule 3 helps to define the use of 'work point,' stating that 'Employee time will . . . end at the designated assembly point,' (i.e. the outfit car). Rule 36, Section 2 provides for payment at the 'pro rata rate.'


The Board must conclude that these interrelated Rules were intended to provide compensation in the circumstances, as here, where the employees were unable to return to their outfit cars until 4 1/2 hours after the completion of their regular eight-hour day . . ." (Also see Carrier's Dissent attached thereto).

We have reviewed both Awards as well as the arguments of both parties and find the Carrier's position persuasive. We note that Claimants were assigned to system extra gangs, and although the Organization argues that the language of Section 3 was intended to apply only to division extra gangs, the fact remains that this section of the Agreement in its title refers to "extra gangs" and makes no distinction between "division" and "system" extra gangs. Moreover, we concur with PLB 4219, Case No. 4 that there was sufficiently convincing evidence of past practice presented by the Carrier to show that Section 3 has been applied with equal force both to division and system extra gangs. On that basis, we must rule to deny the claims.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1990.