

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31151
Docket No. MW-30361
95-3-92-3-104

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

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

(1) The Agreement was violated when the Carrier failed and refused to compensate Claimant E. Downey for the amount of travel time expended driving to and from his assigned work site and the assigned headquarters point of Force 5GY1 from August 23 through September 27, 1990 [System File C-M-7143/12(91-14) COS].

(2) As a consequence of the violation referred to in Part (1) above, Claimant E. Downey shall be compensated '. . . for ninety-seven (97) hours at his time and one-half rate of pay, account the aforementioned rules violations.'"

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 employee 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.

The Claimant was assigned to Force 5GY1, a tie gang of approximately 50 employees. The gang was assigned at Covington, Virginia, and the employees were provided with a per diem allowance for meals and lodging.

On August 23, 1990, the majority of the gang moved from Covington to its new headquarters at Balcony Falls, Virginia. This major portion of the gang thereafter moved to Lynchburg, Virginia, and thereafter to Gladstone, Virginia. During this period, the Claimant and several other employees remained at Covington to complete required work in that area. The parties are in dispute as to whether the Claimant and the other employees accepted this assignment voluntarily or were simply directed to remain in Covington for this work. While in Covington, the Claimant continued to receive a per diem allowance.

The Organization argues that it was improper to split the gang in this manner. The Claimant seeks travel time and pay as if he were required to travel to Covington from each of the three locations where the majority of the gang was located. There is no evidence, however, that he actually undertook such travel rather than, as before, remaining at Covington.

Third Division Award 30398, involving the same parties, covers a virtually identical situation in which several members of a gang were directed to remain at Coal Run, Kentucky, while the remainder of the gang moved its headquarters to Russell, Kentucky. Award 30398 found no Rule violation in this arrangement, and the Board finds no basis to reach a different conclusion. As further explanation, Award 30398 commented as follows:

"The Carrier also presented unrefuted evidence that, as occurred in the instant case, it is a long-standing past practice on the property, since at least 1972, to leave a skeleton crew to complete the details of a project, while the majority of the gang moves on to another project. We find this evidence of the past practice between the parties to be persuasive, and conclude that the Organization failed to carry its burden of proving that the Carrier violated the Agreement in this matter."

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Form 1
Page 3

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.