Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40432
Docket No. MW-39984
10-3-NRAB-00003-070204
(07-3-204)

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line 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 allow Cross System Production Crew 2 employes J. Petty, T. Szabo and G. Kupferschmidt (for the dates of September 12, 13, 14 and 15, 2005) and Cross System Production Crew 2 employe J. Ochoa (for the dates of September 12, 13, 14, 15 and 19, 2005) the proper travel time and mileage reimbursement for all miles and time incurred in using their personal vehicles for transportation between the designated lodging point and designated assembling work (System File C-05-380-047/8-00319-402).

(2) As a consequence of the violation referred to in Part (1) above, Claimant J. Petty '. . . shall now be reimbursed for the 240 miles at the applicable 40-1/2 cents per mile and 7-1/4 hours of travel time at the pro [rata] rate of pay***', Claimant J. Ochoa '...shall now be reimbursed for the 300 miles at the applicable 40-1/2 cents per mile and 7 hours of travel time at the pro [rata] rate of pay***', Claimant T. Szabo '. . . shall now be reimbursed for the 240 miles at the applicable 40-1/2 cents per mile and 7-1/4 hours of travel time at the pro [rata] rate of pay***' and Claimant G. Kupferschmidt '. . . shall now be reimbursed for the 210 miles at the applicable 40-1/2 cents per mile and 6-1/2 hours of travel time at the pro [rata] rate of pay***'"

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 were given due notice of hearing thereon.

The dispute in this case centers on the meaning and application of Rule 22, which provides as follows:

"RULE 22 - BEGINNING AND END OF DAY

Time of employes will start and end at designated assembling point. Designated assembling or starting point will be interpreted as follows:

1. Headquartered Section, B&B, Welding, Engineering Services Crane, Engineering Services Equipment and Machine Sub-departments and Laborer employes will start and end their day at one designated assembling point.

2. Employes who are provided with outfit cars or highway trailers, the assembling shall be the tool or material car provided such employes. If a tool or material car is not furnished, or is located away from the outfit cars or highway trailers, the assembling point shall be the location of the outfit cars or highway trailers.

3. Employes under the provisions of Rule 35 who are not furnished outfit cars or highway trailers, the assembling point shall be a place such as the Company's railroad station, section headqurters, B&B headquarters, tool house or gang tool cars on a siding in a city or town close to the work site. If that point is in

> excess of thirty (30) highway miles from nearest suitable, available lodging, then travel time and mileage to and from such lodging will be allowed." (Emphasis added)

The Claimants worked on a Cross System Production Crew. During the month of September 2005, the Claimants were assigned to perform work at various locations in North Dakota. During that period of time, they lodged at an approved lodging facility located in Whapeton, North Dakota. On the claim dates, according to the Organization, the Claimants' lodging was in excess of 30 highway miles from the gang assembly point. The Organization contends that, because the assembly point on these days was in excess of 30 highway miles from the lodging facility, the Claimants were each entitled to receive travel time and mileage allowances for all miles and time incurred in traveling between the designated lodging facility and the designated assembly point, in accordance with Rule 22, paragraph 3.

At the end of the work period, the Claimants each submitted the required expense sheets to the Carrier identifying the mileage and travel time incurred between the lodging facility and assembly point. The Carrier declined to pay the full amount claimed on the expense reports, thereby triggering the instant claim. The Carrier contended:

> "It is the Carrier's position that any travel time and mileage in excess of thirty highway miles traveling to the assembling point in the am would be payable. In other words, if the assembly point is 35 miles from the nearest available suitable lodging then the employees would be paid for the 5 miles in excess of 30. In returning at the end of the day the same would apply. In total the employee would be compensated for a total of 10 miles. It is the Carrier's position that the first 30 miles is free as we do not pay any mileage or travel time if the lodging facility were 28 miles from the assembly point or 56 miles total.
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> The 30 miles each way would be considered reasonable commute miles and no one is paid mileage to commute to and from their daily work assignment."

The Board finds that the Carrier's interpretation is inconsistent with the plain and unambiguous language of Rule 22. In paragraph 3, it plainly states that, if the employees' assembly point is in excess of 30 highway miles from the nearest suitable

lodging, "then travel time and mileage to and from such lodging will be allowed." It does not state that only travel time and mileage to and from such lodging in excess of 30 highway miles will be allowed. To accept the Carrier's position, the Board would necessarily be required to add to or amend the language of Rule 22 and this is something the Board is not permitted to do. The Organization is entitled to insist on the application of the Rule as it is clearly written. Accord, Third Division Awards 40343 and 40344.

The Carrier also argued that the claim for mileage and travel time under Rule 22 could be excessive and inappropriate on Mondays and Fridays. That may well be true, but there is no showing in this record that the Claimants' expense reports fell within that category. Accordingly, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of May 2010.