

Award No. 4342
Docket No. MW-4397

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK AND WESTERN RAILWAY COMPANY**

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

(1) That System Machine Operator R. L. Conley, a regular assigned operator on burro crane No. 16067, was on January 13, 1947, improperly paid for travel time on that date while traveling with his outfit from Dorney, Ohio, to Joyce Avenue, 2:15 P. M. to 5:15 P. M.

(2) That Machine Operator Conley be compensated for 1 hour and 15 minutes at straight time rate for this travel time outside of his regular work period (7:30 A. M. to 4:00 P. M.) in accordance with Rule 45, paragraph (c).

JOINT STATEMENT OF FACTS: On January 13, 1947, Machine Operator R. L. Conley, with outfit cars and Burro crane N&W 16067 (a gasoline powered machine), was located at Dorney, Ohio. Conley's assigned hours were 7:30 A. M. to 4:00 P. M. with 30 minutes meal period. On January 13th Conley operated the Burro crane in removing rail in the passing siding at Dorney until arrival of the westbound local freight train at 1:45 P. M. At that time the Burro crane was loaded on a special flat car designed for purpose of moving this machine. Operator Conley, accompanied by his outfit cars, including the flat car on which the Burro crane was loaded moved in the westbound local freight train from Dorney to Joyce Avenue Yard (Columbus, Ohio). The train departed from Dorney at 2:15 P. M. and arrived at Joyce Avenue Yard at 5:15 P. M.

Machine Operator Conley was allowed eight hours' straight time compensation for his regular working hours, 7:30 A. M. to 4:00 P. M., January 13, 1947.

Agreement between the parties is by reference made a part of this Joint Statement of Facts.

POSITION OF EMPLOYES: The employes contend that System Roadway Machine Operator R. L. Conley was deprived of compensation under Rule 45, paragraph (c), of the agreement for time consumed traveling with his machine and outfit cars to his next point of work on January 13, 1947.

It is the position of the employes that R. L. Conley should have been compensated for time traveling at straight time rate upon the date in question, even though such travel time extended beyond the regular relieving time.

quarters to a point on the road where the machines actually perform work and back to headquarters, as requested by the General Chairman of the Brotherhood of Maintenance of Way Employes in conference on March 6, 1940.

The request presented by the employes in 1940 involved traveling from headquarters to work location before the day's work began and traveling from work location back to headquarters after completion of the day's work, when such traveling was done on local, work or wreck trains. No attempt was made to deal with the subject of an employe traveling in his boarding car from one headquarters point to another headquarters point, as payment for that kind of traveling had been covered by rule (Rule 45 (a), current agreement) since 1919.

The manifest intent and limited meaning attached to the words "to and from work" is additionally evidenced by the consistent application in scores of instances extending over five years of compensating under the provisions of Rule 45 (a) for traveling such as in the instant case. In support of this statement, there is attached hereto as Carrier's "Exhibit 2" affidavit of O. M. Hall, Assistant to Manager of the Central Timekeeping Bureau. The conduct of the parties for over five years before the instant dispute arose unequivocally reflects the intent of the agreement. The special and limited meaning of the language "to and from work" on this property, as used by the parties in this dispute is obvious.

In the instant case claimant machine operator traveled in his boarding car from 2:15 P. M. to 5:15 P. M. He was not instructed to look after his machine while it was in transit and was not, therefore, placed in charge of his machine. The fact that the car on which the machine was loaded moved in the same train in which Mr. Conley's boarding car moved has no bearing on the case.

It is the Carrier's position claimant was properly compensated under provisions of Rule 45 (a), and claim for additional compensation is not supported by Rule 45 (c) of the agreement.

The Carrier respectfully requests that the claim be denied.
(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier contends that Claimant was properly compensated under Rule 45 (a) of the Agreement between the parties. Rule 45 (a) is as follows:

"(a) Employes required by the Management to travel on or off their assigned territory in boarding cars, will be allowed straight time traveling during regular working hours, and for Sundays and holidays during hours established for work periods on other days. When traveling in boarding cars after work-period hours, the only time allowed will be for actual time traveling between seven P. M. and seven A. M. and at half-time rate."

Claimant contends that the claim should be sustained under Rule 45, (b) and (c), which provide as follows:

"(b) The employes not in outfit cars will be allowed straight time when traveling by train by direction of the Management, during regular work period, and straight time rate during overtime hours, whether on or off assigned territory.

(c) Clam shell, steam American ditcher, pile driver and hoisting engineers when traveling in charge of their machines will be compensated for traveling as provided for in second paragraph of this Rule. Other machine operators traveling with their machines or outfit cars to and from work on locals, work or wreck trains will be compensated for traveling as provided for in second paragraph of this Rule."

The Record indicates that the second sentence of Rule 45 (c) was intended to cover travel from headquarters to a point on the road where the machine actually was to perform work and back to the same headquarters. That the words "to and from work" were meant to have application only to movement from the headquarters to point of work and return to the same headquarters is further evidenced by the practice of the parties under Rule 45 for more than five years; travel such as that involved in this case has consistently been compensated under the provisions of Rule 45 (a) ever since Rule 45 became effective. Although it must be conceded that this past practice and the long-continued acquiescence of the employes to it cannot alter the Agreement, such factors should be seriously considered in determining the intent of the parties to the Agreement.

It should be noted that the Burro crane was loaded on a special flat car designed for the purpose of transporting it over the road. It was not necessary for Claimant to look after the machine while it was en route, and he was not instructed to do so.

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 thereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 Claimant was properly compensated under Rule 45 (a) of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1949.