

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

(1) The Carrier violated the agreement when it required the employees assigned to the track gang under the supervision of Extra Gang Foreman H. R. Glasgow to perform overtime service which was contemplated as part of the claimants' regularly assigned service and duties during the period June 26, 1951 to July 6, 1951 (both dates inclusive) and failed to compensate them for such overtime service in accordance with the provisions of the effective agreement;

(2) Each of the employees assigned to Foreman Glasgow's supervision during the period referred to in part (1) of this claim be allowed one hour's pay at their respective time and one-half rates for each of the days in the period herein involved in which each respective employee was required to perform the overtime service referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier has a tamping crew classified as an Extra Gang which was in charge of Foreman H. R. Glasgow. This gang is assigned to work five days per week with daily assigned hours beginning at 6:00 A. M. and ending at 3:00 P. M., which includes a one-hour meal period.

In June of 1951, the headquarters of this gang was at Nelson, Illinois, and they were furnished with a track motor car for transportation between their designated assembling point (Nelson) and the location of their daily work. In accordance with accepted and agreed to practice, and with the applicable rules of the agreement, this gang left their headquarters daily at 6:00 A. M. by motor car and proceeded to the work location. The gang would then leave the work location sufficiently in advance of their designated quitting time in order to arrive at their headquarters by 3:00 P. M. (their designated quitting time).

Whenever it was necessary to leave their headquarters before 6:00 A. M. or when their return to headquarters was after 3:00 P. M., the employees were compensated for such time at their respective time and one-half rates of pay.

time waiting, or traveling by train or other conveyance, by direction of the Management during or outside of the regular work period or during overtime hours, either on or off assigned territory." (Underscoring ours.) In other words, Rule 26 provides that such an employee will be allowed the straight time rate of pay for the actual time waiting or traveling by train or other conveyance. In this case both parties agree that the time involved in the dispute was time consumed in traveling. Aside from Rule 27, which pertains to rest day relief traveling time and which has no application in the instant dispute, Rule 26 is the only rule in the Schedule Agreement providing a method of payment for time consumed in traveling and as we have pointed out, Paragraph (b) of that rule provides the allowance of the straight time rate for time consumed in traveling during or outside of the regular work period or during overtime hours.

There is no schedule provision by which the Employees can properly support the claim that the time claimants consumed in traveling should be allowed at the rate of time and one-half because Rule 26 (b) specifically provides that the straight time rate will apply to the time consumed by employees traveling.

The Employees in their Statement of Facts, as presented to the Carrier during handling on the property, have said that "Whenever it is necessary to leave their headquarters before 6:00 A.M. or when their return to headquarters was after 3:00 P.M., the employees were compensated for such time at their respective time and one-half rates of pay." We should like to inform your Honorable Board that the Carrier has been unable to find any instance of this kind nor would such payment be proper under the schedule rule. If there was such a payment made, it was improper and beyond the requirements of the schedule rules and if the statement of the employees in that regard is to be given any consideration, then as they have been asked to do in the handling of this matter on the property, they should present proof of such payment having been made under the circumstances outlined.

Lest there be some misunderstanding, we should like to make it clear that on the several dates involved in the claim, the various employees were transported between Nelson, Illinois and their respective homes in accordance with an understanding each of the employees apparently had with Messrs. Glasgow and Youngblood, just the same as they were transported between their homes and Nelson, Illinois prior thereto, the only difference in handling during the period in question being that the employees were also transported via the highway from Nelson, Illinois to the work location rather than by motor car.

It is the Carrier's position that in accordance with the provisions of Rule 26 (b) referred to above, the claimants should be allowed, on each day involved in the claim, for time consumed in traveling between Nelson, Illinois and the work location one hour at the straight time rate of pay and we respectfully request that the claim that such time be allowed at the rate of time and one-half be declined.

All data contained herein has been presented to the employees.

OPINION OF BOARD: Claimants were members of a track gang reporting at Nelson, Illinois. Prior to June 26, 1951 they reported at Nelson at the established starting time and were transported to and from their work location by track motor car. On June 5, 1951 the motor car broke down and from June 26, 1951 to July 6, 1951 they were picked up by truck, arriving at the work location at the designated starting time and leaving at designated quitting time. After July 6, 1951 the foreman was instructed to leave Nelson at the established starting time and to leave the work location so as to arrive at Nelson at the established quitting time. The parties have agreed that one hour's time was consumed in getting to the work location from Nelson and from the work location to Nelson. The issue simply is whether the employees should be paid for that hour at the pro rata rate as travel time or at the time and one-half rate as overtime from June 26, 1951 to July 6, 1951.

Rule 21 (Beginning and End of Day) provides that employees' time will start and end at designated assembling points for each class of employees, except as specified in Rule 26 and that section crews' time will be computed from the starting time at the tool house, a regular starting point, and will terminate there. In the instant case, Nelson was the designated assembling point for this crew and all time elapsing between the time they left Nelson and returned to Nelson should be considered as work time payable under the basic day and overtime rules, unless the time spent in getting from Nelson to the "work location" (the point where the gang began operations that day) and return to Nelson is to be considered as "travel time" within the meaning of Rule 26.

The Employees assert that it has always been a practice on this Carrier to pay track gangs for time spent in getting from and to the assembly point and the work location as work time and when that time was spent before or after working hours, it was paid for on an overtime basis. The Carrier contests this. However, the record shows that even subsequent to the date of this claim, a number of Section Foremen's Daily Track Time Reports listed such time as overtime and the employees were paid on that basis. The ease with which error in so reporting this time could be detected if in fact it was to be treated as "travel time" under Rule 26, renders Carrier's explanation of such payments as being due to error or improper passing by the Accounting Department somewhat implausible. (See also letter of Carrier's Division Engineer dated July 28, 1937 referring to time traveling from its camp to the job as "work time"). We conclude that the record supports the Employees' version with respect to the practice. We find, therefore, that the claim should be sustained (see Award 4581). This conclusion is not to say that under all circumstances should time spent by track gangs in moving from one location to another be paid for as work time. It merely governs this situation. We pass no judgment upon what the proper payment should be for time spent in getting to and from one location to another if the assembly point is changed or if after arrival at a given work location the gang in whole or in part is moved to a different work location.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1954.