

Award No. 12958

Docket No. MW-11881

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

KANSAS, OKLAHOMA & GULF RAILWAY CO.

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

(1) The Carrier violated the effective Agreement when it failed and refused to compensate Extra Gang Foreman G. N. Sly and the members of his gang for the time consumed in going to and from the work site during hours outside of their regular daily assignments during the period from April 1, 1959 through August 20, 1959.

(2) Because of the violation referred to in Part (1) of this claim, Extra Gang Foreman G. N. Sly and the members of his gang (the identity of whom has been made known to the Carrier), each be allowed pay at his respective time and one-half rate for the time consumed during overtime hours as follows:

(a) For one hour in going from and to Wainwright, Oklahoma, on each work day during the period from April 1 through May 12, 1959;

(b) For thirty minutes in going from and to Henryetta, Oklahoma, on each work day during the periods from May 13 through June 19, 1959 and from July 22 through August 20, 1959;

(c) For thirty minutes in going from and to Calvin, Oklahoma, on each work day during the period from June 22 through July 21, 1959.

EMPLOYEES' STATEMENT OF FACTS: Under date of March 16, 1959, the Carrier issued Circular No. 17-59, advising "ALL CONCERNED" that:

"In connection with surfacing track between KO&G Mile Posts 140 and 160, bids will be received until 5 P.M., March 26, 1959, for one extra gang foreman, headquartered at Wainwright, Oklahoma, Mile Post 145."

5. In the second instance mentioned above, the foreman and laborers reported to the new location, traveling from their homes to location of the day's work in their automobiles and moving each day to the nearest road crossing.

6. In the third instance mentioned above, road crossings were not readily accessible to the location of the work, and for this reason work was started and completed each day at the employees' automobiles and time paid to and from location of the work.

POSITION OF CARRIER: This extra gang was handled in exactly the same manner as has been our practice for many years. In numerous instances, the same methods have been pursued to the satisfaction of the foremen and laborers as in most cases the laborers were able to travel to and from home in their automobiles, and in no case were they requested or required to reside at any particular location. It is further mentioned that if they failed to report for work account of weather or breakdown of their automobile, they were not penalized.

It will readily be seen that this arrangement was for the benefit of the men and until the instant claim was presented we had no knowledge of any exception to or dissatisfaction with the arrangement.

In view of the fact that the extra gang was handled in the usual and customary manner, and that no new practice was involved, the carrier requests that this claim be denied by the Honorable Board.

We refer to Third Division Award No. 5886, Docket No. MW-5809, wherein claim was denied.

Since this is an ex parte case, this submission has been prepared without seeing the employees' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission.

OPINION OF BOARD: It is claimed that Carrier violated Rule 5 (e) of the effective Agreement, which states:

"Employees' time will start and end at tool house or outfit cars."

The surrounding facts are not in dispute. On four different successive periods from April 1, 1959 to August 20, 1959, an extra gang was assigned to three different locations. They were not assigned to outfit cars at any of these areas. Tool houses existed at various locations in each of the separate areas in which the work was done, but the employees were not ordered to report to them before commencing work on each day, going instead either to crossings near the work sites or, where road crossings were not readily accessible, to the locations of the work itself. In the former case, their time was recorded as beginning and ending at the crossings; in the latter case at the employees' automobiles.

Petitioner's claim is for compensation for time consumed daily in going to and from tool house locations. It cites as support for the redress sought, Rule 5 (a), which provides that eight consecutive hours, exclusive of the meal period, shall constitute a day's work and Rules 5 (l) and (m), provid-

ing that time worked preceding or following and continuous with a regularly assigned eight-hour period shall be paid for at time and one-half rates (at double time after 16 continuous hours in any twenty-four hour period).

Carrier does not enter any denial of the facts given by Petitioner, but states that the practice has been in existence for many years and that inasmuch as it enabled the men to make use of their automobiles, was for the benefit and convenience of the employees.

The record also does not disclose any refutation by the Carrier of the estimates of travel time given by Petitioner which were or would be required for trips to and from tool house locations.

We do not find the single ground advanced by Carrier—that of practice contrary to agreement terms—persuasive.

The language of Rule 5(e) is plain and unambiguous, its meaning clear and certain. The same may be said of Rules 5 (e), (l) and (m), invoked by Petitioner for remedy sought. When this is true, we may not look beyond the agreement terms themselves into practices.

The Agreement terms support the Petitioner's position for the given facts. The Claimants must be upheld.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1964.