

Award No. 14878
Docket No. MW-15754

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

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

(1) The Carrier violated the Agreement when it refused to allow Machine Operator Boyd Phillips Jr., travel time during his assigned hours when his outfit car was being moved between 7:30 A. M. and 4:00 P. M. on July 12, 1964. (Carrier's file MW-22-64)

(2) Machine Operator Boyd Phillips Jr., now be paid for eight hours travel time for July 12th, at his pro rata rate of pay or a total of \$22.48.

EMPLOYEES' STATEMENT OF FACTS: The claimant was the regular assigned operator of Dragline No. D-30. His regularly assigned hours were from 7:30 A. M. to 4:00 P. M., which included a thirty minute meal period. His assigned work days were Monday through Friday of each week.

On Sunday, July 12, 1964, the claimant's outfit cars, consisting of a machine car and a tool car, were moved from Mack, Colorado to Steamboat Springs, Colorado. Part of this move was made between the hours of 7:30 A. M. and 4:00 P. M.

The claimant properly submitted eight (8) hours of travel time for the period from 7:30 A. M. to 4:00 P. M. on July 12, 1964, on the first period of the July, 1964 time roll. The travel time was deleted and no reason given the claimant for said deletion.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

(2) Machine Operator Boyd Phillips Jr., now be paid for eight hours travel time for July 12th, at his pro rata rate of pay or a total of \$22.48.'

"The Carrier has declined this claim.

Very truly yours,

(Signed) H. C. Crotty

H. C. Crotty
President

HCC:ew (2)
cc: Mr. E. B. Herdman
Director of Personnel
The Denver and Rio Grande Western RR Co.,
P.O. Box 5482, Denver, Colorado 80201

Mr. W. R. Ancell — GC — BMWE
407 Interstate Trust Bldg.,
1130 — 16th St.,
Denver, Colorado 80202"

OPINION OF BOARD: July 12, 1964 was a Sunday and a rest day for Claimant herein. On this date Claimant's box car filled with tools and his Dragline D 30 was moved from Mack to Steamboat Springs. The dragline D 30 was moved on a flat-bed car. While this claim was being handled on the property, the above equipment was referred to as "Claimant's machine and tool car(s)." The Claim as presented to this Board refers to this equipment as "Claimant's outfit car(s)". On his assigned days claimant was drawing seven dollars per diem. Claimant contends he is entitled to travel time on the date in question under Rule 15(a) of the agreement.

Carrier requests that this Claim be dismissed for the reason that Claimant referred to the equipment as "machine and tool cars" while this matter was being handled on the property, and as "outfit cars" upon presenting the claim to this Board. Carrier contends that this constitutes a fatal variance in issues and that therefore, this claim should be dismissed.

In resolving Carrier's request to dismiss, this Board must necessarily determine whether the phrase "machine and tool cars" is a synonym of the phrase "outfit cars" as used and intended in the operation of the agreement herein.

The applicable provisions of the agreement to this question are:

"RULE 16

MEALS AND LODGING

"(a) When employees in the Road Equipment Department with floating headquarters are not furnished outfit cars, they will receive a per diem allowance of \$7.00 in lieu of meals and lodging on days they are on the pay roll and perform service.

“(b) Except for employees drawing per diem as covered by paragraph (a), employees sent away from regular gang or location to work elsewhere will be furnished meals and lodging by the railroad if not accompanied by their outfit cars. Midday lunches customarily carried by the employees and the evening meal, if not held away from same more than three hours beyond the regular quitting time at home station will not be paid for. If possible, in emergency cases, employees will be furnished with proper meals at regular meal time and if at night a midnight meal. (See Supplement E, page 80.)”

“RULE 15

TRAVEL TIME

“(a) Employees required by the Carrier to travel in outfit cars will be allowed straight time (their regular hourly rate without overtime) during their regularly assigned working hours and also on rest days and holidays during hours regularly assigned on other days.

“In the application of the preceding paragraph, employees who elect to use other means of transportation and do not travel in their outfit cars will be allowed time the same as if they had accompanied the cars.”

“RULE 19

OUTFIT CARS

“It will be the policy to maintain outfit cars in good and sanitary condition, to furnish bathing facilities when practicable and desired by the employees, and to provide sufficient means of ventilation and air space. All dining and sleeping cars will be screened when necessary. Permanent outfit cars used for road service will be equipped with springs consistent with safety and character of car and comfort of employees. It will be the duty of the foreman to see that cars are kept clean. When necessary in the judgment of the Carrier, kitchen and dining cars will be furnished and equipped with stoves, utensils, and dishes in proper proportion to the number of men to be accommodated. Fuel and oil for employees occupying outfit cars will be furnished by the Carrier without cost to the employees.”

From the plain language of the agreement, it would be unrealistic to rule that “machine and tool cars” are the same as “outfit cars” as discussed in the agreement. Although Claimant had “machine and tool cars” assigned to him; he did not have an “outfit car” assigned him.

Under Rule 16(a) this Claimant would not be entitled to per diem allowance if he had been furnished an “outfit car”. By accepting the per diem, Claimant clearly admits he was not assigned an “outfit car”. For this reason, Rule 15(a) does not apply to this Claimant and cannot be used as a basis for this claim.

Rule 19 clearly indicates that “outfit cars” are living quarters for employees. It cannot be said that Rule 19 applies in any way to “machine and tool cars”.

It therefore follows that the phrase "machine and tool cars" is not a synonym of "outfit cars" under the clear language of the agreement. While being handled on the property, this claim was for movement of "machine and tool cars"; this Board is being asked to consider a claim based on the movement of "outfit cars". This deviation constitutes a substantial variance in the claim and therefore precludes this Board from assuming jurisdiction in the matter.

This Board has consistently held that where a substantial variance exists between the claim handled on the property and that presented to the Board, the Board may not accept jurisdiction and resolve the dispute. See Awards: 14747 — Rambo, 14298 — Rambo, 14258 — Lynch, 13659 — Mesigh, 13235 — Dorsey, and 12354 — Yagoda.

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;

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1966.

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