

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22489
Docket Number MW-22330

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(The Illinois Central Gulf Railroad

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

(1) The Carrier violated the Agreement when it required the members of Gangs 204, 206 and 203 and the two Group B machine operators assigned to PR-21 and PR-51 to start and end their days' work at a designated assembly point other than tool houses, station buildings or shops (System File La-150-T-76/134-838-633 Case No. 1068 MofW).

(2) The claimants each be allowed thirty (30) minutes of pay at their respective time and one-half rates for each work day beginning August 9, 1976 and continuing until the violation referred to in Part (1) hereof is corrected."

OPINION OF BOARD: Starting on August 9, 1976, Carrier directed Claimants to assemble at a stone-surfaced area within Destrehan Yard concerning work on a project involving the rebuilding of that yard. As a result the Claimants assert a violation of Rule 22(c):

"Time for each class of employees will start and end at designated assembling points such as stationary tool houses, station buildings and shops."

The Employees argue that Rule 22(c) obviously mandates a meeting point other than a stone-surfaced area and they assert that the phrase "such as" permits no contrary interpretation. Carrier disagrees, and insists that the rule merely intended that a meeting point be provided which had off-street parking and water available.

In its Submission here, Carrier attempts to present certain factual information as a basis for its interpretation of the rule.

That factual information should have been presented while the matter was under review on the property. Although Carrier did state, at that level, that it relied upon past practice no evidence of said practice was properly permitted.

We feel that the rule requires more than a parking area with ice and water availability, as argued by the Carrier. The "such as" inclusions are all structures. If a paved area is all that is required, then the rule would hardly have been written in the terms cited. We feel that, for whatever reason, the parties agreed to an assembly point of a different character than provided in this record and thus Rule 22(c) was violated.

The monetary aspect of the claim is indeed troublesome. In the initial claim the Organization mentioned two assembly points which satisfied Rule 22(c) five (5) and seven (7) miles away (one north and one south of Destrehan Yard) and requested thirty (30) minutes overtime pay for each day. In the December 6, 1976 denial Carrier pointed out that the men lost no money as a result of starting at the yard. In its presentation to the Board, the Organization argues that compliance with the rule may have resulted in different hours and reminds us that we should enforce Awards with appropriate findings of damages.

This author is no stranger to the entire question of damages in this industry. But, we have consistently refused to award damages which were speculative. The thirty (30) minute concept - at time and one-half - is, to us, speculative and not based on proved facts. But the fact remains that assembling at a proper location may very well have altered times of attendance so that some monetary award is proper. We will award a daily payment of fifteen (15) minutes at overtime rates.

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;

Award Number 22489
Docket Number MW-22330

Page 3

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1979.