

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22708
Docket Number MW-22606

John J. Mangan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line 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 the members of System Grading Force No. 8666 necessary actual expenses and travel time for the period extending from May 10, 1976 through October 10, 1976 [System File C-4 (8-d)-SGF/12-8(77-16) C1 12-2/.

(2) Because of the aforesaid violation, the employees named below shall be reimbursed for the actual necessary expense incurred and shall be allowed travel time during the period May 10, 1976 through October 10, 1976.

Lead Machine Operator O. B. Davis - Meals, \$255.00;
Automobile Mileage, \$549.00; and 106 hours travel time.

Machine Operator J. W. Whittington - Lodging, \$486.00;
Meals, \$680.00; Automobile Mileage, \$96.00; and 20 hours
travel time.

Machine Operator R. Drew - Lodging, \$220.00; Meals, \$680.00;
Automobile Mileage, \$234.24; and 44.8 hours travel time.

Machine Operator D. G. Lee - Lodging, \$170.00; Meals, \$544.00;
Automobile Mileage, \$167.04; and 32.8 hours travel time.

Machine Operator W. H. Whiddon - Lodging, \$170.00; Meals,
\$544.00; Automobile Mileage, \$167.04; and 32.8 hours travel time.

Machine Operator B. B. Sanders - Lodging, \$220.00; Meals,
\$680.00; Automobile Mileage, \$45.44, and 8.8 hours travel time.

Machine Operator R. D. Brower - Lodging, \$765.00; Meals, \$680.00.

Machine Operator C. S. Wood - Lodging, \$324.00; Meals, \$288.00.

Oiler J. Olliff - Lodging, \$220.00; Meals, \$680.00;
Automobile Mileage, \$45.44; and 8.8 hours travel time.

"Machine Operator D. R. Watson - Lodging, \$80.00; Meals, \$270.00; Automobile Mileage, \$15.36; and 3.2 hours travel time.

Oiler J. M. Holden - Lodging, \$100.00; Meals, \$320.00; Automobile Mileage, \$22.40; and 4 hours travel time.

Machine Operator W. J. Dills - Lodging, \$504.00; Meals, \$448.00.

Machine Operator J. M. Prescott - Lodging, \$110.00; Meals, \$352.00; Automobile Mileage, \$21.12; and 4.4 hours travel time.

Machine Operator C. J. Shearin - Lodging, \$100.00; Meals, \$320.00; Automobile Mileage, \$19.20; and 4 hours travel time."

OPINION OF BOARD: From our review of the record in this case and in consideration of the pleadings of the respective parties, certain undisputed facts emerge; namely:

1. The provisions and requirements of the Award of Arbitration Board No. 298 (National Mediation Board Case No. A-7948) have been incorporated into the negotiated Rules Agreement between the parties.
2. Prior to February, 1975 there was in existence on Carrier's property a System Grading Force floating gang with camp cars identified as No. 8666 which was abolished in February, 1975.
3. By bulletin notice dated April 9, 1976 a gang identified as System Grading Force No. 8666 was advertised with a fixed headquarters at Acme, North Carolina.
4. This fixed headquarters gang completed their assigned construction project and was abolished on October 7, 1976.
5. Effective October 11, 1976, System Grading Force No. 8666 was established as a floating gang with camp cars at Laurel Hill, North Carolina and first worked at Elmore, North Carolina.
6. The individual claims which are the subject of this dispute were thereafter initiated by letter dated November 30, 1976.

The record in this case further reflects that when the authorization for the new construction work at Acme, North Carolina was received, the entire project was discussed with the organization representatives and no objections were voiced relative to the planned creation of a fixed headquarters gang. Subsequently, when the gang was bulletined on April 9, 1976, there was a question raised relative to the absence of a cook position on the advertising bulletin, whereupon the representative was again advised that this was a fixed headquarters gang which did not require a cook assignment. No further objection or complaint was received relative to this gang's assignment until after it was abolished in October, 1976.

Petitioner argues that Carrier has violated the respective provisions of Rules 20(e), 32, 35 and 36 each of which are derived directly from the Award of Arbitration Board No. 298, with particular reference to Interpretation No. 12 of Arbitration Award No. 298 which provides in pertinent part as follows:

"QUESTION: Carrier practice over a period of many years has been to provide camp cars for gangs but camp car rules in effect do not make it mandatory that cars be provided. Employees assigned to such gang are recruited from an entire seniority district and work away from home while assigned to the gang.

"May Carrier discontinue providing camp cars and escape payment under I-A-3?

" * * * * *

"An employee cannot be transferred from coverage of Section I into Section II merely by the discontinuance of camp cars and/or the designation of a headquarters point.

"In applying the foregoing principles and guidelines to the specific question at issue here, it is clear that the employees are in a type of service contemplated within the coverage of Section I. The Carrier may discontinue providing camp cars but may not escape payments under Section I except in locations where the men report for duty at a fixed point which remains the same point throughout a period of 12 months or more."

Rules 20(e), 32, 35 and 36 are substantially - if not completely - the same as Sections I and II of the Award of Arbitration Board No. 298.

Carrier defends their actions in this case on the basis that the gang involved was established with a fixed headquarters for a specific construction project and for no other purpose; that, upon completion of the specific project, the floating gang was established to perform work of a continuing, progressive nature; and, that camp cars were thereafter furnished to the floating gang as provided for in the Rules Agreement.

In addition, Carrier argues that inasmuch as the project at Acme, North Carolina was discussed in considerable detail with the organization's representatives prior to the creation of the fixed headquarters gang and no substantial objections thereto were voiced, the employees are now estopped from advancing the type of claims outlined in the subject of this dispute. We find this argument persuasive if not convincing.

It does not appear from this record that Carrier was attempting to circumvent any of the provisions and/or requirements of the above mentioned Rules or Interpretation when they established the fixed headquarters gang at Acme, North Carolina. It may have indeed been unfortunate that Carrier used for identification purposes the same name and number for the fixed headquarters gang as had been previously used and was subsequently used for a floating camp car gang. However, this poor choice of numbers did not cause the Rules Agreement to be violated.

There simply has been no showing in this case that the employees used were by nature of the work here involved the type of employees identified in the above mentioned Rules. The Rules Agreement has not been violated and we must, therefore, deny these claims.

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 has jurisdiction over the dispute involved herein; and

Award Number 22708
Docket Number MW-22606

Page 5

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.