

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23317
Docket Number MW-23264

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Machine Operator E. W. Murphy for work performed in going to and from his work location and assembly point prior to, following and continuous with his regular assigned work period.

(2) Machine Operator E. W. Murphy be allowed pay at his time and one-half rate for all time expended outside of his regular assigned work period beginning May 8, 1978 and for each day thereafter that the violation referred to in Part (1) hereof continues to exist (System File C #112/D-2251)."

OPINION OF BOARD: Claimant, a machine operator on Maintenance Gang 5519, seeks compensation, at the overtime rate, for the time he spent traveling from the nearest suitable available lodging facility to his assigned work site when living away from home. While the claim is open ended, in the grievance letter dated July 5, 1978, the Organization requested the Carrier to compensate claimant for such traveling time for various days in May and June, 1978. Claimant was instructed to report to his machine at the work site at his assigned starting time and was not permitted to leave the work site until his assigned quitting time.

The Organization contends claimant's designated assembly point is the lodging facility according to Rule 26(c) (5). Under Rule 21, claimant's work time is to begin and to conclude at his designated assembly point. In this case, the Organization argues, because claimant traveled to and from the work site outside his assigned hours, he is entitled to premium pay (time and one half) pursuant to Rule 24(a). In response to the Carrier's past practice argument, the Organization maintains that past practice is irrelevant where there is clear and unambiguous contract language. The Carrier asserts that under a reasonable interpretation of Rule 26(c) (5) and Rule 21, the claimant's machine location is his designated assembly point for determining his compensation. Furthermore, the Carrier claims a past practice has been established on this property which makes claimant's designated assembly point the location of his machine. Lastly, the Carrier argues by analogy that pay for time to and from the lodging facilities would be like paying claimant for time between home and work and, thus, the time is not compensable.

Rule 26(c) is titled "TRAVEL FROM ONE WORK POINT TO ANOTHER" and subsection (5) states:

"(5) An employe who is not furnished means of transportation by the railroad company between designated assembly points and work point and who is authorized and willing to use his personal vehicle for such purpose shall be reimbursed for such use of his vehicle at the rate of nine cents (9¢) per mile.

The designated assembly point of machine operators who are away from their outfit and not able to return the same day or who have no outfit cars, and who must obtain lodging, the nearest available suitable lodging facility to the machine operator's work point (machine location) will be considered his designated assembly point."

The relevant portion of Rule 21 titled "BEGINNING AND END OF DAY" follows:

"Employes' time will start and end at designated assembly points for each class of employes, except as specified in Rule 26..."

The issues presented by this dispute are: 1) what is claimant's designated assembly point for the purpose of determining time actually worked; and 2.) if claimant's designated assembly point is the nearest suitable accommodation, what is the appropriate remedy?

The employes have cited several Third Division awards concerning pay for time spent traveling between designated assembly points and work sites but in each case either the designated assembly point was undisputed or the Carrier had failed to specify a designated assembly point. See Third Division Awards No. 6668 (Robertson); 8825 (Bakke); 9983 (Weston); and 21917 (Lieberman). These cases provide little guidance for ascertaining claimant's designated assembly point for compensation purposes and none of them ruled that a machine operator's lodging facility was his designated assembly point.

Rule 26(c) (5) clearly defines claimant's designated assembly point for the purpose of mileage expense reimbursement. We rule, however, that Rule 26(c) (5) was not intended to set claimant's assembly point for the purpose of determining the actual time he works. In light of the express exception in Rule 21, it would be unreasonable to interpret Rule 26(c) (5) to arbitrarily fix claimant's designated assembly point at the location he chose for lodging. Also, paying claimant for his travel time would be like paying claimant for time spent journeying between home and work which is clearly not contemplated under the agreement. Third Division Award No. 22466 (Franden). Since Rule 26(c) (5) is inapplicable, claimant's designated

assembly point was the location of his machine on the dates involved in this controversy. Our ruling should not be extended to stand for the principle that the designated assembly point for machine operators will always be the location of his machine. Under some circumstances, the designated assembly point for machine operators could be a point other than the work site. Our ruling that claimant's designated assembly point is the location of his machine is limited to these particular facts.

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

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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.