

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23893
Docket Number MW-23319

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 the employes assigned to Extra Gang 3742 for work performed in going to and from their work location and assembly point prior to and continuous with their regular assigned work period (System Files C#118/D-2272 and C#119/D-2271).

(2) Foreman M. Kolste, Machine Operators C. J. Howard and S. G. Brown and Laborers B. C. Taylor, P. A. Youngbauer, P. W. Flanigan, D. E. Swanson and K. A. Swanson each be allowed pay at their respective time and one-half rates for all time expended outside of their regular assigned work period August 3, 1978 through August 17, 1978, both dates inclusive, because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: All Claimants identified hereinabove were, on the subject claim dates, members of Extra Gang 3742, regularly assigned to work 8:00 a.m. to 4:30 p.m. Monday through Friday with Saturdays and Sundays designated as rest days. Extra Gang 3742 is a non-headquartered gang and one which requires its members to be away from home throughout their work week. On the claim dates in question members of Gang 3742 were assigned to a work site located at Hoosac, Montana. As Carrier did not furnish camp cars in which to headquarter Claimants, Claimants variously rented rooms or used their own campers, and employing as a guide the nearest available suitable lodging facility, elected to lodge at Denton, Montana located approximately six (6) miles from the work site at Hoosac.

The instant claim arises as a result of the Organization's contention that the various lodging facilities obtained by Claimants in Denton, Montana served also to be their designated assembly point. The Organization asserts that inasmuch as Claimants were required to leave their assembly point prior to their starting time and to return thereto after their quitting time, they are entitled to pay at the time and one-half rate for travel time both ways between Denton and Hoosac, as per Rules 21, 24(a) and 26 (c) (5) of the Controlling Agreement bearing effective date of September 1, 1967 as amended by the Memorandum of Agreement dated April 9, 1974. These Rules read in pertinent part as follows:

Rule 21
BEGINNING AND END OF DAY

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

Rule 24
OVERTIME

"(A) Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period shall be computed on actual minute basis and paid for at time and one-half rates ..."

Rule 26
TRAVEL TIME

"(C)(5) An employee who is not furnished means of transportation by the railroad company between designated assembling 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 assembling 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 Organization notes that in situations where Carrier provides lodging facilities in the way of camp cars, that Carrier has deemed the camp cars as the designated assembly point. In support of its position the Organization quotes a relevant portion of a letter dated April 28, 1977, authored by Carrier's highest appellate officer and submitted to it in another case (Docket No. 22350, Award 22466), in which Carrier enunciated that, "according to the Rules, the assembly point of the gangs with camp cars is the camp cars". Additionally, the Organization cites the following excerpt taken from Carrier's submission in the aforementioned Award 22466, in which Carrier declared:

"Under the provisions of this rule, it is obvious that the Carrier has the option of furnishing lodging in compliance with Rule 26 (A)(1) or not furnishing lodging and complying instead with the provision of Rule 26 (A)(2). If it is decided not to furnish lodging in line with the provisions of Rule 26(A)(1) due to economical reasons, or because of shortage of outfit cars, or other type lodging facility, then the employee in such case would be required to secure his own daily lodging at the points where he is required to work while employed in the type of service contemplated in Rule 26, and the Carrier is, therefore, obligated to reimburse the employee for the actual reasonable expense therefore, not in excess of \$4.00 per day.

The Carrier, in that instance, would then be obligated to provide transportation from the most SUITABLE LODGING FACILITY (THE ASSEMBLING POINT) to the work site. However, in lieu of such transportation, and if the employee is agreeable to providing his own transportation from the designated assembling point to the work point, the Carrier would then allow mileage expenses from the ASSEMBLING POINT (THE MOST SUITABLE LODGING FACILITY) designated by the Carrier) to the work site."

Based on these pronouncements, the Organization submits Carrier clearly recognizes that assembling points for employees, such as those as the Claimants, engaged in a type of service which requires them, throughout their work week, to live away from home, will be at a suitable lodging facility such as motels, hotels, vans and campers when camp cars are not made available. The Organization asserts there can be no question but that the Claimants' assembling point was at their lodging facility in Denton and that the starting and ending time of their work day is governed by Rule 21 of the Controlling Agreement.

The Carrier, prior to stating its position on the merits, raises the procedural question of timeliness relative to the claim dates in question, asserting that based on the date claim was filed, claim dates prior to August 10, 1978 are untimely and therefore barred from consideration by the Board.

With regard to the merits, the Carrier argues it never designated the various lodging facilities of Claimants in Denton, Montana as the assembly point. Thus, with the exception specifically set forth for machine operators in Rule 26 (C)(5), Carrier argues it has no contractual obligation to pay the aggrieved travel time between the lodging facilities and the work point at Hoosac. Additionally, Carrier avers that Claimants' designated assembly point, as per past practice, was a location easily accessible to the work site where the employees report and pick up their tools, and for the machine operators, the machine location. Carrier contends Claimants reported to this assembly point in the morning and were returned to this same location before going off duty. It was only after Claimants were returned to this assembly point, contends Carrier, that they then proceeded to their various lodging facilities in Denton. Carrier strongly argues that travel time incurred between Claimants' lodging facility and designated assembly point is not compensable under any of the relevant provisions of the Controlling Agreement. Carrier notes that Claimants were compensated in accordance with Rule 26 in lieu of its not providing camp cars for lodging facilities.

In our review of all the relevant evidence and argument before us, it is our determination on the procedural issue of timeliness that the proper date on which claim is deemed to have been filed is October 2, 1978. Therefore, we find that all the claim dates embodied in the instant claim meet the test of timeliness under the Controlling Agreement.

As to the matter of the merits, we are persuaded that the circumstances of the instant case distinguish it from all other past cases cited by both parties. Our assessment of the facts lead us to conclude that, contrary to Carrier's assertion the assembly point was, by past practice, just assumed to be an area close in proximity to the work site at which the tools were kept, in fact, Carrier never did formally designate an assembly point. Therefore, we find that, absent the Carrier making camp cars available to Claimants, and absent the Carrier designating an assembly point, and that further, in view of Carrier's position advanced in Award No. 22466 cited above, the lodging facilities used by Claimants at Denton, Montana to have also been their designated assembly point as that term is envisaged in the relevant provisions of the Controlling Agreement. The Board wishes to stress however, that its findings in this case does not support a general notion that lodging facilities other than those provided by Carrier are always to be deemed designated assembly points. Had Carrier been successful in demonstrating to this Board by way of probative evidence the existence of a designated assembly point for the claim dates in question, we would have reached a very different conclusion given the relevant language of the Controlling Agreement.

Carrier is directed to compensate each Claimant at the rate of pay of time and one-half for the travel time incurred between the assembly point at Denton and the work site at Hoosac, Montana on the claim dates specified.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

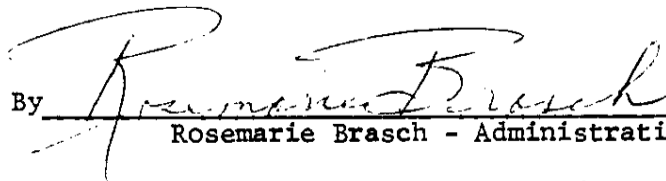
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1982.