

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25299
Docket Number MW-24650

Joseph P. Sirefman, 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 employees assigned to Extra Gang No. 5533 for work performed in going to and from their work location and assembly point prior to and continuous with their regular assigned work period September 24 through October 30, 1980, both dates inclusive (System Files C#52/D-2484, C#54/D-2485 and C#57/D-2486).

(2) Extra Gang Foreman D. Peterson, Extra Gang Foreman J. H. Ferrell, D. Flor; Machine Operators S. N. Kromarek, W. D. Thompson, D. Shuck, T. West, R. Stebbins, T. M. Seymanski; Extra Gang Laborers C. Sheperd, R. Duneman, C. Youngren, R. Tronstad, R. Madler, M. Kirschten, D. Steckler, D. Storer, D. Sedevie, J. Kromarek, D. Engesser, S. Bradac, J. Brewer, R. Hanson, J. Mayo, R. Zacher, T. Bergquist, K. Kromarek, R. Kromarek and H. Tysver each be allowed pay at their respective time and one-half rates for all time expended outside of their regular assigned work period and on rest days (September 28, 1980) during the Claim period because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Claimants are members of Extra Gang 5533. During the period in question they were not lodged in camp cars, but in the nearest available lodging facilities to their work sites. The Organization, citing Rule 21 and Rule 26(c)(5), contends that "in lieu of camp cars, the lodging facilities obtained by the Claimants in relation to their successive work sites became their headquarters and/or assembly point." Therefore, according to the Organization, whenever these employees "have been required to leave their assembly point in advance of their regularly assigned work period, or were returned thereto after the close of their work period (7:30 AM to 4:00 PM with Saturday and Sunday off) they should be compensated at overtime rates for all time expended prior to and/or following and continuous with their regular assigned work period".

The Carrier contends that no rule requires the assembly point to be the nearest suitable lodging facility or that employees start and end their day at the lodging facility. Moreover, in each instance involved here the Carrier designated an assembly point other than the lodging facilities, and Rule 26(c)(5) is confined to the matter of travel reimbursement.

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:

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

In Third Division Award 23317 between these very parties the Division stated:

"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..."

This Board holds that the reasoning in that Award is dispositive of the instant Claim and that Carrier did not violate the Agreement.

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 the parties waived oral hearing;

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

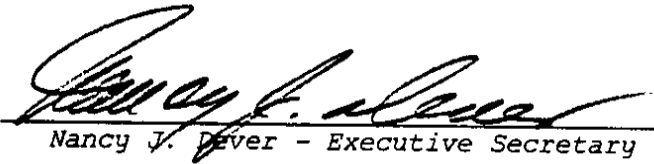
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of February 1985.