

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30398
Docket No. MW-30137
94-3-91-3-576

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

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

- (1) The Agreement was violated when the Carrier failed and refused to compensate certain members of Force 6G05 for beginning and ending their work day at a location (Coal Run, Kentucky) other than the assigned headquarters point of Force 6G05, beginning July 30 through September 13, 1990. [System File C-M-7109/12 (90-1092) COS]
- (2) The claim as presented by General Chairman Cook to Division Engineer R. S. Zenisek on September 20, 1990 shall be allowed as presented because said claim was not disallowed by Division Engineer R. S. Zenisek within the stipulated time limits of Rule 21.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foremen T. Fultz and J. Phipps, Class A Operators H. VanHorn and F. Underwood and Trackmen J. Miller, R. Case and M. Gibson shall each be allowed seven (7) hours and twenty-four (24) minutes' pay at their respective straight time rates and fifty-three dollars and twenty-eight cents (\$53.28) mileage allowance for each and every work day they were required to report for duty at Coal Run, Kentucky instead of their assigned headquarters at Russell, Kentucky."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Before reaching the merits of this claim, we must first address the Organization's procedural contention that the claim was not disallowed by the Carrier's Division Engineer within the stipulated time limits of Rule 21. The record shows that the original claim letter was in fact received by the Division Engineer's office on September 26, 1990, and was responded to on November 26, 1990, thus satisfying the sixty day time limit from the time the claim was received.

Turning then to the merits, the Organization contends that the Claimants were required to begin and end their workday at a location other than their assigned headquarters point, and are thus entitled to receive compensation in accordance with the provisions of Rules 47 and 48.

The record shows that the Claimants were members of a floating gang, Force 6G05, which on July 30, 1990, had an assigned headquarters of Shelbiana, Kentucky. The members of Force 6G05 were provided with a per diem allowance to obtain meals and lodging during this assignment.

On July 30, 1990, the members of Force 6G05 were advised that their positions would be abolished effective with the end of work on August 3, 1990. On August 1, 1990, the employees were advised that Force 6G05 would not be abolished, but that a majority of the gang would move to a new headquarters point at Russell, Kentucky. The Claimants were advised that they were to remain and complete the remaining surfacing operations which Force 6G05 had been working on at Coal Run, Kentucky.

The Organization contends that for each workday involved in the claim, the Claimants were required to travel via personal vehicles from Russell, Kentucky, to Coal Run, Kentucky, prior to the start of the workday, and filed a time claim at the straight time rate for the travel time between those points for each work date between July 30, and September 13, 1990, plus mileage for their personal automobiles.

The Carrier contends that the Claimants continued to receive a per diem allowance, and were to remain at the Coal Run area until the project was completed. It contends that the Claimants commuted to their home area at Russell of their own volition, even though they were paid a per diem allowance to stay at a nearby motel at Coal Run.

The Carrier also presented unrefuted evidence that, as occurred in the instant case, it is a long-standing past practice on the property, since at least 1972, to leave a skeleton crew to complete the details of a project, while the majority of the gang moves on to another project. We find this evidence of the past practice between the parties to be persuasive, and conclude that the Organization failed to carry its burden of proving that the Carrier violated the Agreement in this matter.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.