

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31501
Docket No. MW-31038
96-3-92-3-916

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation)

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

- (1) The Agreement was violated when the Carrier refused to compensate the Claimants* listed below for mileage expense incurred as a consequence of the Carrier's improper change of their headquarters from Enola, Pennsylvania to Baltimore, Maryland, beginning July 8, 1991 (System Dockets MW-2223 through MW-2235).
- (2) As a consequence of the violations referred to in Part (1) above, the Claimants shall each be paid four (4) hours' travel time for each day they were improperly assigned to start and work at Baltimore, Maryland, beginning July 8, 1991 and continuing until the violation ceased.

* E. W. Holloway	R. G. Vanemon
L. E. Shreckengast	A. J. Clark
S. W. O' Brien	G. H. Whitaker, Jr.
D. L. Miller	L. E. Morris
M. L. Waters	C. T. Burkindine
R. L. Lucas	K. L. Barnett"
G. A. Denson	

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.

This claim involves the Carrier's refusal to pay per day travel time between Enola, Pennsylvania, the headquarters of Surfacing Gang SC-231, and Baltimore, Maryland, where Claimants, as part of SC-231, were assigned to work after July 15, 1991.

In support of its claim, the Organization notes that Rule 12 (a) provides that the time of employees will start and end at their advertised headquarters, and relies upon Rule 11, Overtime, and the following portions of Rule 23, Waiting or Traveling By Direction of Company:

"An employee waiting or traveling by direction of the Company by passenger train, motor car, or any other method of transportation will be allowed straight time for actual time waiting and/or traveling during or outside of the regularly assigned hours, except:

* * *

(c) Employees traveling on a motor car, trailer or highway vehicle, who are required to operate, supervise (Foreman), flag or move the car or trailer to or from the track, or handle tools to and from such vehicles, shall be paid for time riding as time worked."

The Organization argues that it is not common practice for the Carrier to split members of a gang into two separate camp car headquarters.

On the property, the Carrier informed the Organization that Gang SC-231 was headquartered in camp cars at Reading, Pennsylvania, until July 11, 1991. Thereafter, due to insufficient work in one location, the gang was moved and split into two groups, one headquartered in camp cars at Enola, Pennsylvania, and the other headquartered at Baltimore, where there were also fully equipped camp cars for use. The Carrier claimed that it was common practice to split gangs.

The Carrier initially argues that this claim is procedurally defective, since the Organization completely changed the basic statement of the nature of the violation in its Submission to the Board, thereby improperly amending the claim, relying upon Third Division Awards 27883, 20456 and 20279. On the merits, the Carrier contends that Rule 23 only requires payment for actual travel, relying upon Award 1010 of Special Board of Adjustment No. 894, and states that Rule 12 does not authorize travel pay where no actual travel occurs.

The Carrier argues that the Organization failed to meet its burden of proof in this case, because there was no showing of actual travel by any of the Claimants submitted. The Carrier cites Third Division Awards 27853, 29062 and 27629. Finally, the Carrier argues that the claim for damages is excessive.

The Board is of the opinion that this claim must be denied based upon the language of Rule 23, requiring compensation only for actual travel time incurred. There was no allegation or proof furnished by the Organization that any of the Claimants actually incurred any travel time between Enola and Baltimore. See Award 1010 of Special Board of Adjustment No. 894. Based upon the unrefuted allegation that camp car headquarters for this gang was bulletined as Enola, if Claimants had undertaken travel on a daily basis rather than using camp cars in Baltimore, as a result of their understanding that Enola was their headquarters and the location of their camp cars, they would have been entitled to compensation for travel time, regardless of whether fully equipped camp cars were located in Baltimore as well. However, the Organization must show that Claimants met the actual travel requirements of Rule 23 to be entitled to compensation. Their failure to prove, or even allege, such travel, requires a denial of their claim. Under such circumstances, the Board does not deem it necessary to decide whether the different language used by the Organization in pursuing this claim renders it procedurally defective.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.