

PUBLIC LAW BOARD NO. 2960

AWARD NO. 143
CASE NO. 211

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Claim filed on behalf of various employees working on Tie Gangs due to the Carrier requiring them to report for duty at locations other than allowed by Rule 25 of the current Agreement.
- (2) Due to the violation of the Current Agreement, it is the claim of the Brotherhood that all employees working on the Tie Gangs must be compensated mileage and overtime for all mileage and time spent driving from the nearest legitimate assembling point to the place the Carrier had them assembled. On each of the dates mentioned, employees must be compensated one hour at time and one-half rate in accordance with Rule 34 and actual time at the time and one-half rate at the end of the day to return to the legitimate assembling point. Furthermore, the employees must be compensated round trip mileage at the prevailing C&NW mileage rate.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

This case involves the interpretation of Rule 25(a) (2) and (3). These rules read as follows:

"Rule 25(a)(2). Employees who are provided with outfit cars or highway trailers, the assembling point shall be tool car or material car provided such employees."

"Rule 25(a)(3). Employees under the provisions of Rule 47 who are not furnished outfit cars or highway trailers, the assembling point shall be a place such as Carrier railroad station, section headquarters, B&B headquarters, toolhouse or gang tool cars on a siding in a city or town close to the work site."

On various dates the Carrier required the Claimants to report to various sidings. The Carrier believes that they have complied with the Rule because (1) each point was a timetable station, and/or because (2) a parts trailer was positioned at the siding.

The Board does not believe the Carrier's position is consistent with a reasonable reading of the Rule. The parts trailer in question has nothing in common in any essential or practical respect with any of the examples used in either of the rules. As for the Carrier's belief that any point listed in the operating timetable as a station is a permissible assembly point, we note that these points, all sidings without buildings, also have nothing in common with the other examples listed in the Rule.

Moreover, to say that a "railroad station" could mean a simple siding, such as the one in question, is clearly inconsistent with the wording of Rule 25(a)(3). The Rule 25(a)(3) mentions sidings as an assembly point and requires that they be occupied by a tool car. Regarding sidings as assembly points, the Rule says they shall be "... gang tool

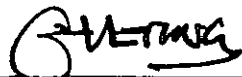
cars on a siding". If the Rule permitted simple sidings to be assembly points under the guise of being "railroad stations" there would have been no purpose or reason to state that gang tool cars had to be placed on "sidings". Last, the Board doesn't believe the Carrier's interpretation is correct since, if they were correct, there would be little or no purpose to the Rule.

While the sidings in question under these circumstances are not permissible assembly points, the claim cannot be sustained as presented. The time claim is plainly excessive. As for mileage this is somewhat speculative since it is improbable that each employee on the gang drove his own car. At this late date it would be extremely difficult to reconstruct who actually drove.

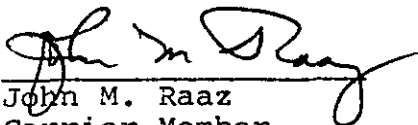
In terms of fashioning a remedy, we note the nearest legitimate assembly point was either 5, 10 or 15 miles away. Thus, a round trip would be 10, 20 or 30 miles. Thus, we believe 15 minutes at the overtime rate for each 10 mile increment is appropriate.

AWARD:

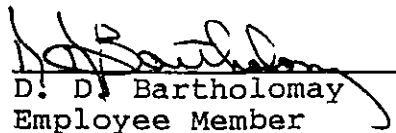
The claim is sustained.



Gil Vernon, Chairman



John M. Raaz
Carrier Member



D. D. Bartholomay
Employee Member

Dated:

Nov. 1, 1989