NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 32
Carrier File No. MWA 89-06-15
Organization File No. C-89-0020-8

STATEMENT OF CLAIM

1. The Agreement was violated when Machine Operator G. L. Reed was instructed to work away from his assigned headquarters for an extended period of time and required to report for duty and end his work day at Aalberg, Missouri instead of Chillicothe, Missouri beginning on February 22, 1989 and continuing.

2. Claimant G. L. Reed shall be allowed one and one-half hours (1.5) pay at his time and one-half rate for each work day beginning on February 22, 1989 until the violation ceases.

F I N D I N G S

The applicable rule in this dispute is Rule 26, which reads as follows:

RULE 26: STARTING POINT

A. Time of employes will start and end at designated assembling point. Designated assembling or starting point will be interpreted as follows:

(1) Section Forces - Tool House.

(2) Employes who are provided with outfit cars or highway trailers, the assembling point shall be the tool or material car provided such employes. If a tool or

material car is not furnished, or is located away from the outfit cars or highway trailers, the assembling point shall be the location of the outfit cars or highway trailers.

(3) Employes under the provisions of Rule 38 who are not furnished outfit cars or highway trailers, the assembling point shall be the station on the Carrier closest to the work location where meals and lodging are available within a reasonable proximity; however, where the majority of the members of the gang and the supervisor agree, any point may be designated as the assembling point.

(4) Employes authorized to provide their own living quarters in trailer home or pickup camper - the assembly point will be a place such as Carrier railroad station, section headquarters B&B headquarters, tool house or gang tool cars on a siding in a city or town close to the work site.

(5) Employes in terminals or fixed headquarters - Employes other than those covered above will have one designated assembling point where they will start and end their day's work, except that in Chicago and St. Louis Terminals there may not be more than two such assembling points designated for each gang.

B. When employes are sent away from headquarters and remain away over night, the beginning and ending of day's work shall be at a designated point such as a railroad depot, section headquarters or motel-hotel accommodations at the nearest town where such lodging and meal accommodations are available.

The Claimant is a Machine Operator with fixed headquarters at Galesburg, Illinois. Beginning February 22, 1989 and for some time thereafter, he was assigned to work at Aalberg, Missouri, requiring him to secure lodging and meal accommodations. He did so at Chillicothe, approximately 30 miles from Aalberg. (The Carrier contends that there are also accommodations at Carrolton, which is 15.6 miles from Aalberg.) The Claimant was required to begin and end his work day at Aalberg and thus did not receive pay for time

spent traveling to and from his motel. The Organization claims he is entitled to begin and end his work day (and thus be in pay status) at his accommodations.

It is not disputed that Aalberg is a section headquarters and that there are no lodging and meal accommodations there. The Carrier and the Organization agree that Rule 26.B. is applicable to these circumstances.

In brief, the Organization contends that the phrase "where such lodging and meal accommodations are available" applies to each of the three choices, i.e., railroad depot, section headquarters or accommodations. The Carrier argues that the qualifying phrase applies only to the accommodations portion; that is, the Carrier may select any of the three options, in this instance the section headquarters.

Both parties have provided accounts of varying practice in this regard. The Board finds, however, that the rule is sufficiently clear to determine there is no merit in the claim. The key to Rule 26.B is the use of the word "such". The logical and inevitable reading is that the phrase "such . . . accommodations" has as its antecedent "motel-hotel accommodations at the nearest town". Rule 26.B simply cannot be read to insure that an affected employee need not be required to travel some minimum distance to begin the day's work.

Reference to other portions of Rule 26, as well as to other related rules, demonstrates that the parties to the Agreement deliberately made varying arrangements as to reporting times for

employees under differing circumstances. Note, for example, the quite different arrangement in Rule 26.A(3). Thus, the language of Rule 26.B must be taken exactly as written, without providing additional benefit.

A W A R D

Claim denied.

Herbert L. Marx

HERBERT L. MARX, Jr, Chairman and Neutral Member

Mark J. Schappaugh - Dissent - written dissent to follow

MARK J. SCHAPPAUGH, Employee Member

D. J. Merrell

D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: 2/24/1994

EMPLOYE MEMBER DISSENT TO AWARD 32 OF
PUBLIC LAW BOARD No. 4768
(Referee H.L. Marx)

This claim involved the interpretation of Rule 26B, which reads:

> "B. When employes are sent away from headquarters and remain away over night, the beginning and ending of day's work shall be at a designated point such as a railroad depot, section headquarters or motel-hotel accommodations at the nearest town where such lodging and meal accommodations are available."

In denying the Organization's claim the Majority held that:

> "Both parties have provided accounts of varying practice in this regard. The Board finds, however, that the rule is sufficiently clear to determine there is no merit in the claim. The key to Rule 26.B is the use of the word 'such'. The logical and inevitable reading is that the phrase 'such...accommodations' has as its antecedent 'motel-hotel accommodations at the nearest town'. Rule 26.B simply cannot be read to insure that an affected employee need not be required to travel some minimum distance to begin the day's work."

The Organization does not take issue with the Board's determination that the phrase "motel-hotel accommodations at the nearest town" is antecedent of the phrase "such...accommodations", however, that does not defeat our claim. To the contrary, if the parties did not intend the phrase "where such lodging and meal accommodations are available" to also apply to "railroad depot" and "section headquarters", then the very writing of that eight (8) word phrase would have been redundant. That is, if the phrase "where such lodging and meal accommodations are available" did NOT qualify "railroad depot" and "section headquarters" and instead only contemplated "motel-hotel accommodations", then there would have been absolutely no need to have written that qualifying phrase. Obviously, if the Carrier designates motel-hotel accommodations in the town that was nearest, then it was a given that the town had motel-hotel accommodations, i.e., the Carrier could not designate motel-hotel accommodations if none were available. The bottom line is that if the true intent of the parties was to allow the Carrier to designate a railroad depot, a section headquarters or motel-hotel accommodations without requiring the depot or section headquarters to be in a town with motel-hotel accommodations, then the last eight words of Rule 26B should have been omitted.

Lastly, not only was this claim supported by the clear

language of Rule 26B, during the handling on the property the Organization presented forty-three (43) written statements from Carrier employes indicating the consistent interpretation and application of Rule 26B in the manner described by the Organization. Typical of such statements was the one authored by employe D. H. Bradley, a portion of which reads:

> "***whenever I was taken away from my headquarters point overnight I would begin and end my day at a section house or depot in the same town where the lodging and meals were located. If there was no section house or depot in that town I began and ended my day at the motel where I was staying."

The Carrier could muster but a single written statement in an attempt to counter the evidence presented by the Organization.

A plain and objective reading of the agreement language as well as consideration of the past practice evidence supports a finding in favor of the Organization. For the above reasons this decision is erroneous and is of no precedential value. Therefore, I respectfully dissent,

Mark J. Schappaugh
Employe Member-PLB 4768