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PUBLIC LAW BOARD NO. 4219 Case No. 4
ESTABLISHED UNDER AGREEMENT BETWEEN THE PARTIES

Neutral Member: Lamont E. Stallworth

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees

and

Union Pacific Railroad Company.

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

1. The Carrier violated the provisions of the current Agreement when it failed or otherwise refused to properly compensate members of System Tie Gang X-814 travel time in accordance with Rule 36, Section 2, (a) and (b), when on June 17 and 18, 1985 said employes were required to travel outside of their assigned hours from Brighton, Colorado to Oakley, Kansas a distance of 269.2 miles.

2. The Carrier further violated said Agreement when it refused to properly compensate Claimant Employes of System Tie Gang No. X-814, identified herein, at the proper rate of pay for overtime service rendered on June 17 and 18, 1985.

3. The Carrier will now be required to make Claimants whole for all wage and travel time loss suffered as a result of the Carrier's violation of the provisions of the current Agreement.

OPINION OF BOARD: At the time this claim arose, the Claimants were employed on System Tie Gang X814 working at Brighton, Colorado. According to its submission, the Carrier establishes system extra gangs during the warm months to perform certain repair and maintenance work.

At the time this dispute arose, the Claimants were working a regular 6:00 a.m. to 3:00 p.m. shift. At the completion of their regular tour of duty on Monday, June 17, 1985, the Claimants

herein were instructed to report to their next assignment, at Oakley, Kansas, to begin work the following morning, Tuesday, June 18, 1985. The distance between Brighton, Colorado and Oakley, Kansas is approximately 270 miles.

The Carrier ordered some of the Claimants to work until 6:00 p.m. on Monday evening, to help load the machines and equipment for moving, according to the Organization. The Organization alleges that some, but not all of these employes received proper overtime payment for this work. None of the Claimants was released before 3:00 p.m. on that day.

According to the Organization, the "outfit" cars, i.e. the cars in which the Claimants sleep while on the road, did not arrive until 2:30 a.m. on Monday morning. According to the Organization, the Claimants were not compensated properly for either their travel time to the new site, or their time spent waiting for the outfit cars to arrive.

On July 15, 1985 the Organization filed a claim on behalf of 42 employes who it claims were not properly compensated for their time on the day of the move. The general claim of the Organization is for travel and waiting time for the Claimants who moved on the day in question. Although the Organization originally claimed overtime payment for some of these Claimants as well, that claim has been dropped.

The circumstances of each sub-group of Claimants differ somewhat, and therefore the relief to which they claim

entitlement. However, the Organization in general relies upon Rule 36, Section 2(b), which states,

> Section 2 -- Change of Work Location - Outfit Service:
>
> In lieu of pay for time spent traveling when moves are made from one work point to another outside of regularly assigned hours,...including waiting time enroute, employes will be paid travel time at their pro rata rate computed on the basis of forty (40) miles per hour for normal traveled road miles between the work location from which the move commenced and the new location.
>
> In computing time under this rule, fractions of less than one-half hour shall be dropped and one-half or more shall be counted as an hour.

The Carrier, on the other hand, denied the claim and continues to deny it on the basis that the applicable rule is not the one relied upon by the Organization, but rather Rule 36, Section 3, which states,

> Section 3 - Extra Gang Assignment - Traveling In or With Outfit Cars
>
> (a) Employes assigned to outfit cars which are considered their headquarters will be compensated as follows when their outfit cars are moved on or off their assigned seniority district whether they ride the outfit cars or use other means of transportation to the location where outfit cars are being moved.
>
> (b) When a move occurs on a regular work day, employes involved will be allowed straight time for any portion of the move which occurs during their regular assigned hours.
>
> (c) When a move occurs on a rest day, employes involved, who performed compensated service on the work days immediately preceding and following such rest day, will be allowed straight time on the basis of one hour for each 40 miles or fraction thereof for any portion of the move which occurs during hours established for work periods on other days. The maximum time allowance under this Section (c) shall be eight hours per day.
>
> (d) As pertains to employes using other means of transportation to the location where outfit cars are being

moved, in case outfits are diverted, or work performed enroute, no allowance will be made for any time lost.

(e) In computing time under this rule, fractions of less than one-half hour shall be dropped and one-half hour or more shall be counted as an hour.

The Carrier contends that the tie gang which the Claimants composed was an "extra gang," and should therefore be considered only under Rule 36, section 3. Under this provision the Claimants would not recover any payment for travel or waiting time, because these activities occurred outside of the normal hours of work, i.e. 6:00 a.m. to 3:00 p.m. The Carrier contends that these gangs have been regarded and paid as extra gangs for the past eighteen years.

The Organization argues, however, that these gangs are covered by the more generous Rule 36, section 2, because they are not explicitly excluded from it. Furthermore the Organization asserts that even if the Carrier has been using the latter rule to pay the system gangs for a long time, such past practice has no weight compared to the clear language of Rule 36, section 2.

Thus, the essential issue in this case is whether the crew to which the Claimants were assigned, System Tie Gang X814, falls under the special rule applying only to extra gangs, or under the general rule.

The Organization contends that the system extra gangs are covered by Rule 36, Section 2 because they are not specifically mentioned in the groups excluded from it. This analysis is taken from a sound principle of contract interpretation. However,

another equally important principle of contract interpretation is that specific contract language controls over general language. Here, the more specific contract language is that contained in Rule 36, Section 3, which prohibits extra gangs from receiving travel pay outside of regular working hours.

The more specific rule only controls, however, if the Parties intended to include the type of gang at issue here under it. The Organization argues that the language of the Section 3 indicates that it was not intended to apply to system extra gangs, but rather only division extra gangs. In reaching this conclusion the Organization relies upon the following language in Section 3,

> (a) Employes assigned to outfit cars which are considered their headquarters will be compensated as follows when their outfit cars are moved on or off their assigned seniority district (Emphasis added).

The Carrier informs the Board that the Carrier has both "division" extra gangs, whose seniority districts are aligned with the Carrier's operating divisions, and "system" extra gangs, which operate throughout the entire system. According to the Carrier, all extra gangs are seasonal in nature, and the divisional extra gangs may have either a fixed or mobile headquarters, while the system extra gangs traditionally have a mobile headquarters in outfit cars.

The Organization argues that the reference in Section 3 to the "assigned seniority district" indicates that the section could not apply to system extra gangs, who do not establish their

gang seniority within a single division or district. According to the Union, Section 3 applies only to extra gangs engaged in work not customarily performed by section gangs; these sporadic extra gangs are assigned particular outfits as headquarters and operate within a particular seniority district. The Carrier admits that the language in Section 3 may be a bit imprecise, but that it still applies to system as well as division extra gangs.

The Board agrees that the wording of Section 3 is somewhat unclear and ambiguous. It simply is not clear whether the Parties intended the reference to "seniority districts" to mean "seniority groups" in a general sense, or to mean the narrow "seniority districts," as that term is used by the Parties in other contexts under this Agreement. Therefore it is not clear whether it was intended to apply only to division or to system extra gangs as well.

Given the ambiguity in the language the Board must turn to past practice for guidance. Although the Organization has raised one instance in which the Carrier has granted travel time to a system extra gang under Section 2, the Carrier has established that the consistent practice has been to process and deny such claims under Section 3.

The Board does not concur with the Carrier that the Organization's attempts to obtain stronger language on this issue during contract negotiations necessarily demonstrate that the Organization accepts the Carrier's interpretation of the language. However it does indicate a desire on the part of the

Organization to obtain language which is clearer than the current language, and in so doing, the Organization concedes, at least on one level, its ambiguity.

Because of this ambiguity the Board must turn to past practice for the proper interpretation of the language, and concludes that past practice supports the Carrier's position. Therefore the claim must be denied.

AWARD

Claim is denied.

Signed in Chicago, Illinois on 12th of June, 1987

Lamont E. Stallworth
Neutral Member

E. R. Myers
Carrier Member

C. J. Foss
Organization Member