

PUBLIC LAW BOARD NO. 6781

AWARD NO. 1

CASE NO. 1

Carrier File: 1383319

Organization File: 2RM-9494T CNW

PARTIES TO

THE DISPUTE: Brotherhood of Maintenance of Way Employees Division -
IBT Rail Conference

vs.

Union Pacific Railroad Company
(former Chicago & North Western Transportation Company)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

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

1. The Carrier violated the Agreement when it failed and refused to allow compensation for travel time and mileage to Foreman R. W. Marshall, Common Machine Operator A. N. Scavo and Trackmen J. A. Emmerson, M. A. Fox and M. L. Kuker in connection with the change of their assembly point on September 9, 29 and October 2, 2003 (System File 2RM-9494T/1383319 CNW).
2. As a consequence of the violations referred to in Part (1) above, Foreman R. W. Marshall, Common Machine Operator A. N. Scavo and Trackmen J. A. Emmerson, M. A. Fox and M. L. Kuker shall "**** each be compensated six hours of overtime at the applicable rates, six hours of travel time at the applicable straight time rates for assembly point changes and \$115.20 for the 320 miles traveled."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant Claim is a lead case that is intended to govern other similar claims being held in abeyance. The Claim embodies three different scenarios with an identical fact pattern. Although the pattern is somewhat complex, the essential facts of its makeup are not in dispute.

At all times relevant to the Claim, the Claimants worked on Mobile Gang 2984 in the State of Iowa. The gang worked four ten-hour days with regular hours from 0700 to 1730 Monday through Thursday. The mobility of the gang caused it to live away from home in various lodging facilities such as camp cars, highway trailers, hotels and motels. As such, the gang members are entitled to meal, travel, and lodging allowances in accordance with the terms of the Agreement.

The first scenario occurred on Tuesday, September 9, 2003. The Claimants began their workday at the designated assembly point at Estherville, Iowa. They were instructed by their supervisor to travel to Mason City, Iowa, some 111 miles away, where they would work that day and report for their next day's work on Wednesday, September 10th. Claimants were not returned to their Estherville assembly point but instead were instructed to end their workday on September 9th at the new assembly point of Mason City. The travel to Mason City was accomplished in Carrier provided vehicles and occurred during the gang's regularly scheduled working hours. Claimants were not provided transportation back to the Estherville assembly point to retrieve their personal vehicles that were parked there nor were they allowed travel time or mileage to drive their cars to the new Mason City assembly point. Instead, it appears from the on-property record, that Claimants were not returned to the Estherville assembly point to retrieve their cars until the end of their work week. Thus, on this record, the Claimants reported for work on Tuesday, September 9, 2003 at Estherville, Iowa and were not returned to that point until the end of their workday on Thursday, September 11th.

As a result of this first scenario, Claimants contend they were entitled to remain under pay, beyond regular hours and at the overtime rate, until they were returned to the Estherville assembly point because Rule 25 provides that their work time starts and stops at the designated assembly point for the day. Given the 111 mile distance, they contend it would have taken two hours to travel back to the Estherville assembly point from Mason City. Once back at the Estherville assembly point, their work time for the day would stop. However, per Rule 47 C.1., they were entitled to another two hours of pay at straight time rates for the time spent traveling from the Estherville work point to the new Mason City work point because it occurred outside of regularly assigned hours. In addition, per Rule 47 C.2., they claim mileage for driving their cars the 111-mile distance from Estherville back to Mason City because the Carrier did not provide transportation to the new work point.

The second scenario occurred on Monday, September 29, 2003. Claimants reported to work at Mason City and were told to travel to Ft. Dodge, Iowa and finish their day's work there. They were told that Ft. Dodge would be the new assembly point for Tuesday, September 30th. They were not returned to the Mason City assembly point but ended their work day at Ft. Dodge. Once again, the travel from Mason City to Ft. Dodge on September 29th occurred during regular assigned hours in Carrier vehicles. The Carrier provided the gang transportation back to their cars at Mason City during regular assigned hours at the end of the work week on October 2, 2003. The distance between Mason City and Ft. Dodge is 105 miles and takes two hours of travel time.

Under this second scenario, like the first scenario, the Claimants contend they are again entitled to two hours travel time back to the Mason City assembly point on Monday, September 29th. Because their work time did not end for the day per Rule 25 until they were returned to that assembly point, the travel time calls for the overtime rate. Once back at the Mason City assembly point, their work time stopped for the day, but they are entitled to two hours travel time and mileage to drive their cars from Mason City to Ft. Dodge.

The third scenario occurred on Thursday, October 2, 2003. The Claimants reported for work at the Ft. Dodge assembly point. They were instructed to travel to Des Moines, Iowa and end their workday there and report for work again at Des Moines on Monday, October 6, 2003. They were not returned to the Ft. Dodge assembly point at the end of the day. Instead, it appears from the

record that they were returned to their cars that remained at Mason City, which was the original assembly point for the work week. The distance between Ft. Dodge and Des Moines is 104 miles.

Under the third scenario, the Claimants seek similar travel time and mileage allowances as in the first two scenarios.

The Carrier contends that its actions comply with the work site reporting requirements of Rule 47. It has also cited supporting precedent dating from the 1967 award of Arbitration Board No. 298. The pertinent portions of the rule read as follows:

RULE 47 - CAMP CARS

The Company shall provide for employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels as follows:

* * *

C. Travel from one work point to another

1. Time spent traveling from one work point to another outside of regularly assigned hours or on a rest day or holiday shall be paid for at the straight time rate.
2. An employee who is not furnished means of transportation by the Company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such other transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the Company he shall be reimbursed for such use of his automobile at the prevailing mileage rate. If an employee's work point is changed during his absence from the work point on a rest day or holiday this paragraph shall apply to any mileage he is required to travel to the new work point in excess of that required to return to the former work point.

* * *

In accordance with Rule 47, the Carrier notes that in each scenario it provided transportation from one work point to the next during regularly scheduled hours. As a result, it contends that it does not owe the Claimants any allowances for overtime, travel time, or mileage.

If Rule 47 were the only controlling language in this dispute, the Carrier might have a stronger position. However, the record also establishes that the parties negotiated a modification to

the national rules. That agreement, dated March 3, 1994, revised Rules 23, 24, and 25 to provide different work site reporting provisions unique to the former C&NW. Rule 25 provides as follows:

RULE 25 - BEGINNING AND ENDING OF DAY

Time of employees shall start and end at designated assembly *point*. Designated assembling or starting *point* shall be interpreted as follows:

* * *

- B. For employees under the provisions of Rules 47 or 49, *the assembly point* shall be *a location* designated by the appropriate supervisor by the end of the previous day. If *that point* is in excess of thirty (30) highway miles from suitable, available lodging, then travel time and mileage to and from such lodging shall be allowed. *The assembly point* shall be accessible by automobile and have adequate off-highway parking.

(Italics and underscoring supplied for emphasis.)

The parties also developed guidelines for the proper application of Rule 25 for mobile gangs. Those guidelines provide as follows:

GUIDELINES FOR WORK SITE REPORTING UNDER RULE 25 A and B

At what specific locations would paid time commence and end in each of the following circumstances:

* * *

Under Rule 25 B:

2. A Carrier designated lodging facility has adequate off highway parking and has been designated as *the assembly point*. Employees park at the Carrier designated lodging facility and are transported by Carrier to and from the work site.

ANSWER: Paid time starts and ends at *the* lodging facility (*assembly point*).

3. The work site has adequate off highway parking and, therefore, can be properly designated as an assembly *point*. Employees drive their personal vehicles to and from the Carrier designated lodging facility and *the* designated assembly *point*.

ANSWER: Paid time starts and ends at the work site (assembly *point*), if 30 highway miles or less. If the work site is over 30 highway miles, travel time and mileage to and from such lodging facility shall be allowed.

4. The work site does not have adequate off highway parking and, therefore, cannot be properly designated as an assembly point. Carrier designates *a location* having adequate off highway parking as *the* assembly *point*. Employees drive their personal vehicles between the Carrier designated lodging facility and *the* designated assembly *point*. Employees park at *the* designated assembly *point* and are transported by the Carrier to and from the work site.

ANSWER: Paid time starts and ends at *the* assembly *point* if 30 highway miles or less from the lodging facility. If *the* assembly *point* is over 30 highway miles, travel time and mileage to and from such lodging facility shall be allowed.

(Italics supplied)

Given the italicized and underscored text of Rule 25 B and the Guidelines for interpreting the rule, several important observations are readily apparent: First, although the daily assembly point for mobile gangs can be changed from time to time, there can be only one assembly point per work day, which is where the employees start and end their time. The requirement of a single assembly point per work day is amply demonstrated by the repetitive and consistent use of the singular form of the multiple references to it. For example, the text is replete with references such as "a location," "the designated location," and "the assembly point." Secondly, it follows from the first observation that employees' work time must start and end at this same singular assembly point each day. The corollary to this observation is that the employees' work time does not end for a given work day until they are returned to this singular assembly point. Third, and finally, it is clear that the Carrier may change the designated assembly point from time to time but only in-between and not within work days. To do so, however, the Carrier must give notice of the change to the employees on the gang before the end of the previous work day for the change to be effective for the next work day.

Our review of the on-property record does not reveal any sufficient evidence of a past practice that would operate to undercut the foregoing observations.

Given the previous discussion, it can be seen that the Claim must be sustained. In each of

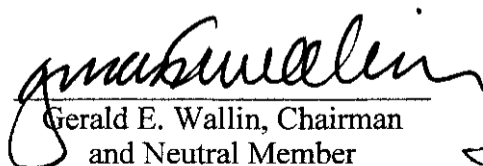
the three scenarios, the Carrier failed to properly change the designated assembly point for the days in question. For example, in the first scenario, the employees reported to Estherville on September 9, 2003, which was the assembly point for that day. The supervisor directed the gang to move to Mason City and end their day there. This violated Rule 25 B in two respects: First, the supervisor attempted to change the assembly point within the same day. Second, the supervisor failed to provide notice of the change by the end of the previous work day.

Because the employees were not returned to Estherville on September 9th to end their work day, technically the employees' time continued to accrue without end. Nonetheless, the Organization has graciously limited its Claim to the amount of time and mileage that would have accrued had they commenced return travel to Estherville right after the end of their regularly assigned hours for that day. Because that two hours of time traveling back to Estherville occurred outside of regular hours, it follows that the time would be paid at overtime rates per Rule 30. Once back at Estherville, where their work time was stopped from further accrual, the employees were then assumed to have driven their personal vehicles to Mason City outside of regular hours. Thus, per Rule 47 C.1., the employees were entitled to the travel time at straight time pay rates for the two-hour drive to Mason City. Plus, per Rule 47 C.2., because the Carrier did not provide the transportation for that after-hours move, the employees were also entitled to the applicable mileage allowance. The same travel pay and mileage allowance analysis pertains to the second and third scenarios.

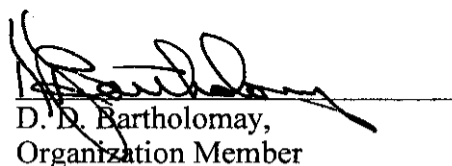
Given the foregoing discussion, we are compelled to sustain the Claim as presented.

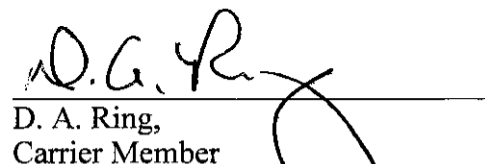
AWARD:

The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member

I dissent


D. D. Bartholomay,
Organization Member


D. A. Ring,
Carrier Member

Dissent to follow

Date: 12-16-05