PUBLIC LAW BOARD NO. 6781

AWARD NO. 2

CASE NO. 2
Carrier File: 1383311
Organization File: 4RM-9497T CNW

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employes Division - IBT Rail Conference

vs.

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

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

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 Surfacing Gang 3414 employes D. E. Corwin and S. M. Penberthy their personal mileage expense reimbursement in connection with their headquarters changes during September, 2003 (System File 4RM-9497T/1383311 CNW).

2. As a consequence of the violation referred to in Part (1) above, '*** The Claimants must each be compensated for the mileage allowances as submitted, $38.52 for Claimant Corwin and $100.40 for Claimant Penberthy.'"

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. Unfortunately, our review of the on-property record shows it to be inadequate to establish certain critical facts necessary to resolving the Claim. Rule 47 requires the payment of mileage allowances between successive work points only if the Carrier does not furnish transportation and the employes must drive their personal vehicles. Thus the pivotal questions are whether such transportation was available and at what time during each applicable work day was it available.

While the record provides suggestions about the operative facts, they are not sufficiently ascertainable. For this Board to determine the operative facts would require us to "read between the lines" of the written record and indulge in an impermissible degree of speculation. For example, it appears to be undisputed that Claimants were returned to their assembly points at the end of each day by company truck as required by Rule 25. However, the record does not explain what became of that

truck. If it remained available to transport the employes to their assembly point for the next day, then they are not entitled to the mileage allowance if they chose instead to drive their personal vehicles. On the other hand, if the truck merely dropped off the employes and then departed to perform other tasks and no other Carrier-provided transportation was made available for the travel, then Carrier would not have fulfilled its obligation under Rule 47 and the employes would be entitled to the mileage allowance.

Another shortcoming in the record is that it appears to have lifted much of its text in "cut and paste" fashion from the record in Case No. 1 without proper regard to the significant differences between the two disputes. For example, while the Organization's report of conference admonishes the Carrier for believing it "... has no obligation to return the Claimants to the assembly point ..." at the end of the work day, the instant Claim does not seek any travel time at overtime rates back to the assembly point per Rule 25. We would have expected such a contention if the Carrier had not properly returned the Claimants to their assembly point within regular assigned hours. Moreover, the instant Claim also does not seek travel time per Rule 47 from the assembly point for one day to the assembly point for the next day when there was such a change. Once again, we would have expected such a contention if the employes had not been allowed to accomplish such travel during regular assigned hours.

The record also suggests the parties have different interpretations about whether working track equipment from the area of the assembly point for one day to the assembly point for the next day qualifies as Carrier-provided transportation between work points under Rule 47. However, on this territory, Rule 47 does not govern by itself. It must be construed in conjunction with Rule 25. The discussion about the interaction between Rules 25 and 47 set out in Award No. 1 is incorporated by reference and need not be repeated here. As noted in Award No. 1 of this Public Law Board, Rule 25 effectively prevents the existence of more than one assembly point/work point per calendar day. Because the assembly point continues to exist unchanged until the employes are returned to it to end their work day, it follows that any intra-day geographical relocation of equipment cannot qualify as Carrier-provided transportation from one work point to another. Read together, Rules 25 and 47 require the Carrier to provide transportation *after* the employes have been returned to their assembly point to end their work day. If the Carrier does not provide transportation to the assembly point for the next day after that point in time, then the employes become eligible for the travel allowances provided by Rule 47.

Given the foregoing discussion, we are constrained to find that the record fails to provide proper answers to certain critical fact questions necessary for the resolution of the Claim. It is well settled that the Organization and Claimants bear the entire burden of proof to establish the essential elements of its Claim. On this record, we find that burden has not been satisfied.

AWARD:

The Claim is denied.

Gerald E. Wallin, Chairman
and Neutral Member

D. D. Bartholomay,
Organization Member

D. A. Ring,
Carrier Member

Date: 12-16-05