SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 90

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

Norfolk Southern Railway Company

Statement of Claim:

> Claim on behalf of members of Timber and Surfacing Gang #1, whose work point was changed outside regular hours over weekend rest days of Friday, September 20, 1996, that the Carrier violated Rule 34 of the current agreement when the Claimants were paid travel time based on 403 highway miles while the camp trailers actually traveled 782 miles by rail; therefore, as a consequence they each shall be allowed an additional twelve hours and thirty-eight minutes travel time.

[Carrier File: MW-SELM-96-14-SG-359]

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The governing rule reads as follows:

> Time spent in 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. Such time spent in traveling from one work point to another shall be computed on the basis of actual miles the camp cars or trailers are moved by the shortest route, using a factor of 30 miles per hour.

The Claim arose when the Carrier paid Claimants based on highway mileage. The camp

trailers, however, were actually moved by a rather circuitous route totalling 782 rail miles. In its third response on the property, Carrier also raised the contention that shortest route rail miles was the appropriate basis for computing the travel time.

In reviewing this matter, the Board has disregarded much of the material and argument contained in the Carrier's submission because it was not raised during the handling of the Claim by the parties on the property. When considering only the contentions properly raised on the property, the Claim distills down to a dispute over whether actual rail miles or shortest route rail miles should control the travel time computation.

Neither party cited prior precedent on the property to the Board. Rather, both parties premised their contentions on the words of the rule itself. As a result, the Claim is one of first impression.

The Organization's Claim would be well founded If the words, "... by the shortest route,..." were not contained in the second sentence of the rule. If they were absent, the rule would clearly call for a computation based on the actual miles the trailers were moved by rail. But those words are present. It is not logical to assume the parties included those words in the second sentence intending them to have no effect. Indeed, interpretations of agreement language that render some of the words to be meaningless or of no effect are not favored. Rather, the preferred interpretation is one that gives effect to all of the terms of a provision wherever such an interpretation can reasonably be construed.

On the record before us, we find the proper computational method was to use the shortest distance rail route to calculate travel time regardless of the actual mileage the trailers were moved. It is undisputed that using Carrier's own track as well as ICG trackage rights, the proper payment, using this shortest rail route, would have been slightly less than Claimants have already been paid.

Claimants are not entitled to additional compensation. Therefore, the Claim is denied.

Gerald E. Wallin
Chairman and Neutral Member

D. D. Bartholomay
Organization Member

E. N. Jacobs, Jr.
Carrier Member

Issued at St. Paul, MN on April 20, 1998