

Award No. 1527

Docket No. 1420

2-MKTT-SM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYEES: (a) That under the current applicable agreement the carrier declined to properly pay Sheet Metal Worker T. H. Krueger for traveling time from 11:40 P. M., May 4th, to 6:15 A. M., May 5th, 1950, between Houston and San Antonio, Texas.

(b) That accordingly the carrier be ordered to compensate this employee for the aforesaid time or six (6) hours and thirty-five (35) minutes at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker T. H. Krueger, hereinafter referred to as the claimant, is an hourly rated employee and is regularly employed by the carrier in the maintenance of way (water service department) with headquarters at Smithville, Texas. However, the claimant was assigned to perform some service at Houston, Texas on May 4, 1950, but, nevertheless, he was directed by his foreman to proceed that night on the Southern Pacific train to San Antonio, Texas and perform some work thereat. This train departed from Houston at 11:40 P. M., May 4 and arrived at San Antonio, Texas, at 6:15 A. M. May 5, 1950. This dispute has been handled in accordance with the controlling agreement No. DP-68, effective March 15, 1950, up to and with the highest designated officer of the carrier to whom such matters are subject to appeal with the result that such officer has declined to adjust it, which is confirmed by copy of letter dated November 28, 1950, submitted herewith and identified as Exhibit A.

POSITION OF EMPLOYEES: It is submitted on the basis of the foregoing facts that the carrier expedited the completion of the assignment of the claimant at San Antonio, Texas, by requiring him to travel there during such unusual hours in lieu of authorizing him to do so within his normal daily hours of work. It is inevitable that this traveling service was regarded as essential to the carrier as was the work the claimant was assigned to perform at San Antonio and certainly there is nothing in the controlling rules agreement that would, by any stretch of the imagination, sustain the refusal of the carrier to compensate the claimant for such travel time at his straight

The Carrier respectfully requests that the Second Division, National Railroad Adjustment Board, find the Board has no jurisdiction to hear and determine this claim.

Without waiving its plea to the jurisdiction of the Second Division, but expressly reserving all rights in law or in equity under said plea to the jurisdiction of the Second Division, National Railroad Adjustment Board, and excepting to any action of the Second Division, National Railroad Adjustment Board, in assuming jurisdiction, the carrier respectfully requests in the alternative that Board find Mr. Krueger was "relieved from duty" and permitted to go to bed for more than five hours (as the period between 11:40 P. M., May 4, 1950, and 6:15 A. M., May 5, 1950, when Mr. Krueger was in bed was 6 hours 35 minutes); that under Article XI of the agreement "such relief time will not be paid for;" that Mr. Krueger has been completely and correctly paid for his services; and that the Board deny the claim.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

The facts of this case are important and must be stated in order to insure proper understanding of our decision on the vital issue involved.

On February 13, 1935, the general chairman of the sheet metal workers' organization advised the carrier his craft had been authorized by the water service employees on the M-K-T Lines to represent them and requested a conference. Following conference, and on March 1, 1935, the parties executed a representation agreement, covering water and plumbing service mechanics and helpers in the carrier's maintenance of way department, to remain in effect until changed in accord with the Railway Labor Act. Subsequent negotiations resulted in two other agreements, one on September 1, 1935, and another on March 7, 1950, containing identical preambles and scope rules. The agreement last mentioned was current on all dates in controversy, hence all mention of the current agreement hereinafter will have reference thereto.

The preamble of such agreement states:

"This agreement shall apply to employees in the Water Service and Plumbing Service in the Maintenance of Way Department."

Its scope rule provides:

"These rules govern the hours of service and working conditions for the following employees in the Maintenance of Way Department (not including supervisory employees above the rank of foreman):

- (a) Water Service and Plumbing Service Foremen.
- (b) Water Service and Plumbing Service Mechanics.
- (c) Water Service and Plumbing Service Helpers."

So far as pertinent, Article XII (a), classifying employees, reads:

"Water service and plumbing service employees will do all work coming under the Maintenance of Way Department and do all work they have handled in the past, . . ."

In addition Article XI (a) thereof provides that waiting and traveling time will be paid hourly rated employes, required to leave their home stations, at straight time rate.

At this point it should be noted that, except for the term as used in describing the contracting parties, a careful examination of such agreement fails to disclose any reference whatsoever to sheet metal workers.

With the foregoing background we can now give attention to the particular facts giving rise to the instant dispute.

On May 4, 1950, T. H. Krueger, an hourly rated water service and plumbing service employe, who was employed in the carrier's maintenance of way department, was directed to leave Houston, Texas, and proceed by train to San Antonio for the purpose of performing some work at that point. He left Houston at 11:40 P.M. and arrived at his destination at 6:15 A.M. on May 5. Enroute he was furnished a Pullman berth and permitted to go to bed. Because of this fact the carrier refused to pay him traveling time between Houston and San Antonio. Thereupon the organization presented a claim in the property based on Rule XI (a) of the agreement for the 6 hours and 35 minutes involved at the straight time rate. When it was denied the dispute was filed with this Division of the Board.

At the outset the carrier contends the instant dispute is one involving a maintenance of way man, not a sheet metal worker. This raises a jurisdictional question which must be determined from the facts of record before any consideration can be given to the merits of the cause.

Assuming for the moment the carrier is correct in its position there can be no doubt this Division's duty is to dismiss the case for lack of jurisdiction. Section 3, First (h) of the Railway Labor Act, as amended, expressly provides that the National Railroad Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, that the Second Division shall have jurisdiction over disputes involving sheet metal workers, and that the Third Division shall have jurisdiction over maintenance of way men. Moreover, we have held, and properly so, that this Division has jurisdiction of disputes only to the extent such jurisdiction is conferred upon it by the terms of the Act (See Award 925).

When the record, which we pause to note fails to establish the organization's claim the carrier has sheet metal workers employes in its maintenance of way department, is carefully reviewed; when express provisions of the agreement to which we have heretofore referred and on which the claim is based are kept in mind; when consideration is given to the fact such agreement fails either expressly or by implication to mention or include sheet metal workers; and, when it is recalled jurisdiction depends upon the status of the employes involved, not upon the organization representing them, we are impelled to conclude the instant dispute must be held to involve a maintenance of way man and is therefore not within the prescribed jurisdiction of this Division of the Board. It follows the claim should be dismissed without prejudice to the right of the claimant to prosecute it in the proper forum.

In reaching the decision just announced we have not been unmindful of awards relied upon by the organization as supporting a contrary conclusion. Those where the jurisdictional question is not involved, or which do no more than recite perfunctorily that this Division has jurisdiction over the particular dispute, are of little value as precedents and need not be labored. Others more in point, particularly Awards 784, 789, 792 and 973 are clearly distinguishable and do not support its position because the employes therein involved are designated and recognized as members of a class of workers coming within the prescribed jurisdiction of the Division under express provisions of the agreements on which the claims are based.

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350

AWARD

Claim dismissed without prejudice in accord with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1952.