

Award No. 4584

Docket No. 4402

2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the Carrier failed to compensate Carmen Philip Frediani and Francisco Lucina for time waiting to return to home point on August 10, 1961, and

2. That accordingly, the Carrier be ordered to compensate Carmen Philip Frediani and Francisco Lucina thirteen hours (13) hours at time and one-half rate for August 10, 1961.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, employs Carmen Philip Frediani and Francisco Lucina, hereinafter referred to as the claimants, at Great Falls, Montana with assigned hours of duty from 7:30 A. M. to 4 P. M. — thirty minutes for lunch.

On August 10, 1961, claimants were instructed by their supervisor to proceed by company highway truck to Cushman, Montana to rewheel car SHPX 18303 and upon completion of such work assignment that if time did not permit their return to home point at Great Falls by their quitting time, they were to proceed to Harlowton and remain thereat until 7:30 A. M. the following morning and return to Great Falls during the hours of their assignment at home point.

The duty assigned to be performed at Cushman was completed by the claimants at 5 P. M., thereby precluding their return to Great Falls by 4 P. M. In conformity with instructions of their foreman, claimants proceeded to Harlowton, where they tied up at 6 P. M., remaining there overnight, waiting until 7:30 A. M. August 11, 1961 to begin their return to Great Falls.

Carrier has refused to compensate the claimants for the time spent in waiting at Harlowton from 6 P. M. August 10, 1961 to 7:30 A. M. August 11, 1961 — a period of thirteen (13) hours.

3. Rule 22(b) clearly allows employes on ordinary road trips to be tied up for a non-compensated rest period of more than five hours at any time "during the time on the road."

4. The lack of limitations on the maximum length of the non-compensated rest period and the time it may be assigned under Rule 22(b) contrast sharply with the more restrictive provisions for assigning rest periods to wrecking service employes under Rule 22(c).

5. The claimants were tied up for overnight rest periods under Rule 22(b) in conformance with the carrier's responsibility and duty to operate its business in a safe, efficient and economical manner.

6. The organization's contentions that rest periods must be given before freight car repairs are completed and then only in the employe's own discretion without any regard for the safety and economy of operations, are obviously illogical, absurd and wholly unsupported by any language in the agreement.

7. The carrier's interpretation of Rules 22(a) and 22(b) is supported by past practice, and the failure of the organization to appeal the decisions of the carrier which rejected previous attempts by this organization to change the application of those rules.

8. Award No. 1637 of this board, involving rules, facts and issues directly in point, supports the carrier's position and should be followed in this case.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes be denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimants, Philip Frediani and Francisco Lucina, are regularly assigned Carmen — working the 7:30 A. M. to 4:00 P. M. shift — at Carrier's Car Department at Great Falls, Montana.

On August 10, 1961, the Claimants were sent on an emergency trip to Cushman, Montana, to re-wheel Freight Car SHPX 18303. The Claimants made the 180 highway mile trip in Carrier's specially designed large highway truck — which carried the needed tools, spare wheels and parts.

The Claimants left Great Falls around 8:30 A. M.; arrived at Cushman about 2:00 P. M.; and completed the job by 5:00 P. M. In keeping with their instructions, the Claimants then went to Harlowton, the nearest point where meals and lodging were available, arriving there about 6:00 P. M. and remaining overnight. The Claimants were paid for their meal and lodging expenses.

At 7:30 A. M. on August 11, 1961, the Claimants left Harlowton and arrived at their Great Falls home point at 11:30 A. M.

The Organization contends that the time spent at Harlowton by Claimants between 6:00 P. M. on August 10, 1961, and 7:30 A. M. on August 11, 1961, was "waiting time" and not "time relieved from duty" and such time is, therefore, compensable.

The Carrier, on the other hand, maintains that the "claimants were paid for all time actually working, waiting or traveling both within and outside of their regular assigned hours". The Carrier further maintains that the Claimants, in keeping with the provisions of Rule 22 of the controlling Agreement, were properly not paid for time relieved from duty.

Rule 22 reads as follows:

"Emergency Road Work

(a). Other than as provided in paragraph (b) of this rule, an employe regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency road work away from such point, will be paid for all time from time ordered to leave home station until his return as follows: for all time waiting or traveling, straight time rate during home point working hours, time and one-half during home point overtime hours; for all time working, straight time rate during home point working hours, overtime rate as per Rule 17 during home point overtime hours.

(b). If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that, in no case, shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from working his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. Employes will be called as nearly as possible one (1) hour before leaving time and on their return, will deliver tools at point designated." (Emphasis ours)

All Awards given by the Parties to the Referee were objectively and analytically studied and then re-studied. As a result thereof, the Board is convinced that it cannot be successfully refuted that the underscored portion of Rule 22(b), supra, gives validity to the Carrier's action.

The Board is also convinced that it cannot be successfully denied that the Carrier had the right, under the controlling Agreement, to relieve the Claimants from duty.

In Second Division Award 1637, wherein the facts and rules are similar, it was held that:

"We quite agree that if an employe is held after the work is completed that it will be construed as waiting time.

But where rest of five hours or more can be had after leaving and before returning to his home point, outside of assigned hours and waiting and traveling time, the exception applies and the employes are not entitled to pay for such time under the rule."

In Second Division Award 4269, wherein the facts and rules were identical, a denial Award was given by this Board.

We believe the above Awards are sound, well reasoned and support the Carrier's position. Accordingly, we must deny the Organization's claims.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1964.