Award No. 4760
Docket No. 4564
2-GN-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 Julian Ciba and Francisco Lucina for time waiting to return to home point on June 25, 1962.

2. That accordingly, the Carrier be ordered to compensate Carmen Ciba and Lucina for twelve and one-half (12½) hours for June 25, 1962 each at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, employs Carmen Ciba and 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 June 25, 1962, claimants were instructed by their supervisor to proceed by company highway truck to Hedgesville, Montana to make repairs to tank car GATX 54312 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 tie up at Harlowtown, Montana 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 Hedgesville was completed at 4:50 P.M. In conformity with instructions of their foreman, claimants proceeded to Harlowton where they tied up at 7:00 P.M., remaining thereat overnight until 7:30 A.M. June 26, 1962 to begin their return to Great Falls.

Carrier has refused to compensate the claimants for the time spent in waiting at Harlowton from 7 P.M. June 25, 1962 to 7:30 A.M. June 26, 1962, a period of twelve and one-half (12½) hours.

This dispute has been handled with all carrier officers designated to handle such matters, all of whom have declined to adjust it.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

from substantially similar facts in Docket Nos. CL-9973 and CL-10214, involving these parties and the identical Scope Rule of the Clerks' Agreement in effect on this property. Award 10741, in Docket No. CL-9973, denied the claim there primarily on the grounds that the transfer of the remaining work to telegraphers was proper 'within the frame work of historically established exceptions' to the Scope Rule of the Clerks' Agreement, and cited Award 10301 (Docket CL-10214) as 'an especially persuasive precedent.'

It appears to the Board these recent decisions should control the disposition of the instant case under an application of the doctrine of stare decisis—stand by decisions and do not disturb settled matters.

Accordingly, this claim will be denied."

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. It is the fundamental right of the carrier to assign carmen on road trips in whatever manner is necessary or desirable, except as that freedom has been limited by law or some clear and unmistakable language in the collective bargaining agreement.

2. The organization agrees that the claimants were subject to Schedule Rules 22(a) and 22(b) while performing the work involved in this case.

3. Rule 22(b) clearly allows employees 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 employees 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 was followed by this board in recent **Awards 4269-4275** involving the same parties, the same rules and essentially identical facts. Therefore, the doctrine of **stare decisis** is applicable.

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 Employes' Position is largely based upon the fact that the Claimants' rest period came after the completion of their emergency road work on disabled equipment. On the other hand, the Carrier contends that when employes are sent out on emergency road service which includes the handling of their own transportation equipment, the work is not completed until they tie up at their home point. Under the Rule applicable to this claim neither contention is pertinent, since it involves emergency road work and not wrecking service.

Rule 22 applies to both kinds of service and prescribes pay for all time working, waiting or traveling, except for rest periods of at least five hours, with certain differences, — namely that rest periods for wrecking service employes must be not less than five hours nor more than eight, and that for emergency road work employes they shall include an opportunity to go to bed for at least five hours. In addition, Rule 22 very pointedly distinguishes between the two kinds of service with reference to when the relief periods can be given.

Rule 22(c), relating to wrecking service employes, provides explicitly that "rest periods *** shall not be given before going to work, nor after all work is completed."

On the other hand, Rule 22(b), relating to emergency road service employes, not only omits any such limitation, but on the contrary provides that the relief from duty can be given "during the time on the road," which can only mean any time while the employe is away from his home station.

These differences are so pointed and so explicit as to admit of no serious argument. In this case the rest period obviously came during the time on the road, and since the claimants were not wrecking service employes, but were on emergency road service, it is entirely immaterial whether it came before or after the completion of their work. It necessarily follows that we need not consider whether the work had been completed before the rest period was given.

We would be doing violence to the Rules and to the clearly expressed intention of the parties if we were to consider these provisions as identical in meaning. Since the parties provided in the rule that only in wrecking service must the relief period occur after the employes start work and before they complete it, the Board has no power to extend it also to employes in emergency road work. This Division has necessarily reached the same conclusion in repeated awards, which under these explicit Rules need not be cited.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C, McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1965.

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