

Award No. 5506
Docket No. 5253
2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement at Paducah Diesel Shop on April 26 and May 1, 1965, when they did not compensate Electricians C. A. Moores, Jr. and J. A. Waltman for wait and travel time to Louisville, Kentucky and return.

2. That the Carrier compensate Electricians C. A. Moores, Jr. and J. A. Waltman for twenty (20) hours each at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: Electricians C. A. Moores, Jr. and J. A. Waltman, hereinafter referred to as the Claimants, were instructed by the Illinois Central Railroad Company, hereinafter referred to as the Carrier, to board a dormitory car in Paducah, Kentucky freight yard at 9:00 P. M. on April 26, 1965.

This dormitory car was placed on the rear of a freight train which was going to Louisville, Kentucky.

Claimants performed work on the Kentucky Derby Special Train while in Louisville.

After the Special Train left Louisville, Claimants were again instructed to board the dormitory car in the Louisville, Kentucky freight yard and were transported to the freight yards by truck, to travel back to Paducah, Kentucky on the rear of a freight train.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including Carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

The agreement effective April 1, 1935, as amended September 1, 1949, as subsequently amended, is controlling.

SUMMARY

The company has shown by the language in Rule 12 that the rule does not apply to the filling of a vacancy unless the vacancy represents or flows from an emergency. Since the claimants were not used as a result of an emergency, the rule does not apply in their case. The company has also shown that even if the rule were considered applicable, the five hour rest provision provides for no compensation for such instances as that in the present dispute since the claimants were given the opportunity to go to bed for better than five hours. The union admits that they have been silent concerning Rule 12 in such instances in the past. Their silence is tacit recognition that the claimants were paid in accordance with the rules as have been the electricians who performed the same work under the same conditions in each of the fifteen years prior to this dispute.

The union's claim represents nothing more than an attempt to have the Board revise rules which have been applied uniformly without objection for several years. Such revision should stem from negotiation only. The union's claim should be denied.

All data submitted in support of the company's position has been presented to the union and made a part of the question in dispute.

(Exhibits not reproduced.)

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.

Claimants are electricians regularly assigned to Paducah, Kentucky, who were selected to work on the Kentucky Derby Special Train at Louisville, Kentucky during the week preceding the Kentucky Derby in 1965. They traveled to and from Louisville in a dormitory car on April 26, 1965 and May 1, 1965 respectively. Each Claimant here seeks compensation for twenty (20) hours at the pro rata rate for time spent traveling on said dormitory car under Rule 12 of the effective Agreement, which in part provides as follows:

"EMERGENCY SERVICE - ROAD WORK

Rule 12. Employes sent out on the line of road to fill vacancies or for any other emergency shall be allowed time from the designated reporting time, until they return to a designated place, as follows: time and one-half during shop overtime hours and straight time during shop straight time hours, while working; straight time will be allowed for all time engaged in waiting for trains or traveling, except wrecking crews only, who will be allowed time and one-half while waiting for trains for traveling, in other than regular bulletined shop hours, and if

during their hours on the road away from home station there should be opportunity to go to bed for five hours or more, such time as men are relieved from actual service will not be paid for." (Emphasis ours.)

Carrier contends that Rule 12 only applies to vacancies arising out of emergency situations and that no compensation for such travel time on sleeping cars or dormitory cars had ever been paid in the past when like assignments were filled on the Kentucky Derby Special train over a fifteen year period.

Petitioner insists that contrary past practice is not controlling because the applicable language of Rule 12 is clear and unambiguous.

The record reveals that over a period of fifteen years the most senior electricians who applied for work on the Kentucky Derby specials were customarily selected for such service and were furnished transportation to and from Louisville without compensation for time actually spent in travel on Carrier's dormitory cars. The particular work assigned to Claimants on this dispute is required annually at the same location on the first Saturday in May when the Kentucky Derby is traditionally held in Louisville, Kentucky. Clearly, the special work assignments performed by the Claimants arose in connection with a foreseen annual event and cannot be construed as arising out of an emergency as urged by Petitioner.

Analysis of the pertinent language contained in Article 12 of the Agreement lends credence to Carrier's position that application is confined to emergency road service or vacancies of an emergent nature. In fact, precise reference to "employees sent out on the line of road to fill vacancies or for any other emergency . . ." suggests that the language was intended to cover only emergency situations, and admitted past practice supports such conclusion.

Prior awards relied on by Petitioner are readily distinguishable from the instant dispute and we do not agree that the provisions of Rule 12 are free from ambiguity and clearly applicable. Therefore, long established practice as to annual trips for special work in connection with the Kentucky Derby must prevail as this Division has no authority to materially alter accepted interpretations of ambiguous rules. Accordingly, the claim will be denied.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1968.