Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8186
Docket No. 8010
2-C&NW-CM-'79

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Carmen Gus LaScala, Dick Wilmot, Gene Miller, and Mike Williams, Sioux City, Iowa were denied compensation for the period of 12:00 noon to 12:30 P.M. while they were away from home station on emergency road work; the amount of one-half hours pay at straight time rate for the following days:

Gus LaScala	July 20, 1977
Dick Wilmot	July 20, 1977
Gene Miller	August 9, 1977
Mike Williams	August 9, 1977

2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen Gus LaScala, Dick Wilmot, Gene Miller and Mike Williams for one-half hours pay at the straight-time rate for the above identified dates, and that the Transportation Company, in the future discontinue its practice of depriving carmen of compensation for meals periods while away from home point on emergency road work.

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 were given due notice of hearing thereon.

This claim arose when the carrier assigned the four employees to work at locations other than their regular reporting location, and failed to pay them for the half hour lunch time taken while away from their normal reporting station.

It is the position of the claimants that any assignment away from their regular reporting station must necessarily amount to an emergency assignment

within the meaning of Rule 10. They cite previous decisions where Rule 10 had been applied to assignments away from the home station of the employee in an emergency situation. The claimants argue that the fact of their work away from their regular reporting station necessarily requires the continous payment for all time spent, including the lunch hour, based upon a past practice for such payment.

The carrier denies that the employees were engaged in an emergency assignment. The carrier also contends that the Carmen are not necessarily restricted to work at the place of reporting because of a recent change in the nature of the job duties, the change concerned the requirement that carmen be able to drive a truck. The carrier argues that this necessarily requires that not all work away from the reporting station is emergency work.

Further, the carrier cites Rule 153 of the Collective Bargaining Agreement which excludes lunch time from time for which pay is given to employees regularly assigned to road work. This rule is applicable to situations where the employee leaves and returns to the home station on a daily basis.

Finally, the carrier argues that the claimants have not met their burden of proof that the work involved was emergency work within the meaning of Rule 10.

The record reflects that two of the employees were engaged in changing of a wheel, and the other two were engaged in unloading cars. Further details of the need for such work is absent from the record.

The basic question to be answered is whether the assignment of employees to work other than at their reporting station is necessarily emergency work within the meaning of rule 10. The argument of the claimants is not persuasive.

While assignments away from regular reporting stations may involve work that is emergency in nature, it is not reasonable to conclude that every assignment away from the regular reporting station amounts to a real emergency.

The claimants' argument that an emergency is any situation that is unexpected is not acceptable. Any work situation has occurrences which cannot be anticipated by either the employees or the employer. To conclude that any variation from the work routine is an emergency does not logically follow.

Rule 137 provides that carmen may be assigned to road work. The types of work described in this rule include work on wheels and "work of a similar character". Therefore, it is clear that the record in the instant case does not support the conclusion that the work engaged in by the four claimants was emergency work within the meaning of Rule 10.

This is not to say that the carrier's argument, that an evolution has occurred in the nature of carmen's work which would allow assignment at any location throughout the system is valid. The claimants' argument that any such evolution would be a bargainable matter is well taken. Thus, any basic change in the method of work assignment would be a matter of negotiations between the parties.

It is undisputed that the employer has paid for time away from home station in the past. However, such practice does not require an automatic application of prior decisions which found emergency work situations within the meaning of Rule 10. Here the record does not contain sufficient evidence to conclude that a true emergency existed within the meaning of that rule.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of November, 1979.