

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Chicago and North Western Transportation Company

**Dispute: Claim of Employees:**

1. Carman Mickey Doren, Richard Wilmot and Lloyd Sorenson 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, in the amount of one-half hours pay at the straight time rate, as follows: Carman Doren; June 4, 1979; Carmen Wilmot and Sorenson, June 6, 1979.
2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen Doren, Wilmot and Sorenson for one-half hours pay at the straight time rate for the dates listed, and correct this violation of Rule 10 in the future.

### 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 three Claimants were denied their one-half hour lunch periods while away from their work station allegedly on emergency road work. One date is involved for each Claimant. One Claimant was sent to inspect a grain train. The other two were to repair a hot box on a freight car.

The theory of the Claimants is that since they performed emergency road work away from their work station, pursuant to Rule 10, they should be paid for the lunch periods. The first paragraph in Rule 10 provides as follows:

"An employee regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with practice at home station and will be paid straight-time rates for traveling or waiting, except rest days and holidays, which will be paid for at the rate of time and one-half.

If, during the time on the road a man is relieved from duty and permitted to go to bed for five or more hours, such relief time will not be paid, provided that in no case shall he be paid for a total of less than eight hours each calendar day, when such irregular service prevents the employee from making his regular daily hours at home station. Where meals and lodging are not provided by the railway company, actual necessary expenses will be allowed.

Employees will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at points designated.

If required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight-time rate.

Wrecking service employees will be paid under this rule, except that all time working, waiting or traveling on week days after the recognized straight-time hours at home station, and all time working, waiting or traveling on rest days and holidays will be paid for at rate of time and one-half."

Claimants point out that a rule identical to Rule 10 was decided in Award 1784 that the Claimants therein should be paid for their lunch period; Award 7859 achieved the same result as did Award 8303.

The Carrier relies upon Award 8186 to deny the claim. In that award, the Board held that all road work was not necessarily emergency road work and further held that in that case the changing of a wheel and the unloading of cars was not emergency road work. It held specifically:

"While assignments 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 Carrier points out that in Award 8303, the Carrier did not allege on the property that the trip was not emergency road work.

This Board's decision will be based upon whether, in this particular instance, the inspection of the grain train and/or the repair of the hot box is emergency road work. Claimants alleged that both functions were.

The Carrier denied the claim by referring to its position in Award 8186; namely, that the work was not emergency work and there is no provision in the agreement for payment during employee's meal period during these circumstances.

Since the facts in Award 8186 were different; namely, the changing of a wheel and unloading cars, the reference by the Carrier to the previous award does not specifically address whether an emergency was involved in the instant matter.

In its letter of April 22, 1980, the Organization attempted to justify its determination that it was emergency work as follows:

"It is the employees' position that inspecting a grain train and the repair of a hot box constitutes emergency work. It is undisputable that the cars which claimants were sent out to repair could not be attached to a train until the defective parts were made operable and made to meet FRA standards. The cars required immediate attention, constituting a pressing necessity if carrier was to fulfill its obligations to its customers.

Supporting our position is Third Division Award 4354 which reads in part:

'An emergency has been previously defined in Awards of this Board. It has been said that it is suggestive of a 'sudden occasion; pressing necessity; strait, crisis'. It implies a critical situation requiring immediate relief by whatever means at hand.'"

Third Division Award 2040 held in part:

"Webster's defines emergency as a 'sudden occasion; pressing necessity; strait; crisis'. It implies the unusual rather than the ordinary."

It is the finding of this Board that while it agrees that not all road work is necessarily emergency road work, that when a Claimant alleges that the work was of an emergency nature with a proffered rationale for its claim, that the Carrier cannot ignore the allegation without reference to the specific events. It did not specifically refute the allegations of the Claimants nor did it raise sufficient question to shift the burden back to the Claimants to clearly establish the emergency.

In the language of the Organization of April 22, 1980 cited above, the Board finds that the allegations presented to describe the emergency nature of the repairs was sufficient to shift the burden to the Carrier to refute with appropriate details, which it has not satisfied on the property.

For the reasons cited above, the claims will be sustained.

A W A R D

Claim sustained.

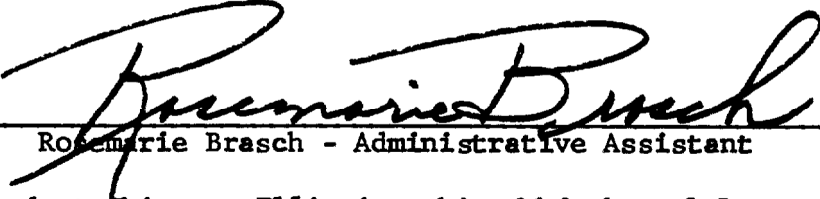
Form 1  
Page 4

Award No. 9348  
Docket No. 8846  
2-C&NW-CM-'83

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of January, 1983.