

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

Dispute: Claim of Employees:

1. Carmen S.W. Schroeder and M.H. Romig 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 the straight time rate for May 25 and 26, 1983.
2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen S.W. Schroeder and M.H. Romig for one-half hours pay at the straight-time rate of pay for the following dates:

<u>Claimant</u>	<u>Date</u>
S.W. Schroeder	May 25, 1983
M.H. Romig	May 26, 1983

3. That the Chicago and North Western Transportation Company failed to supply the Employees with written reasons for denial of the nature required by Article V 1(a) of the August 21, 1954 Agreement.

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 employes 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 Organization states the two Claimants were assigned to perform inspection or repair work away from their home point, Mason City, Iowa. According to the Organization, these assignments violated Rule 10 of the Agreement in that the Carrier refused payment for the Claimant's meal periods. All other time was acknowledgedly paid in accordance with the Agreement. The Carrier defends its denial of payment because, as it views Rule 10, such a payment is proper only when Carmen are in emergency service. Rule 10 reads in pertinent part:

"An employe 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 in accordance with practice at home station and will be paid straight-time rate for travelling 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 he shall be paid for a total of less than eight hours each calendar day, when such irregular service prevents the employe 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."

This is not a first impression dispute between these parties over the issue of what assignments fall within the purview of Rule 10 and may properly be considered "Emergency Road Work." The Carrier heavily emphasized Award 8186 in its Submission. In that Award, the Board noted Rule 137 provided that Carmen may be assigned to road work. The Board went on to state:

"The types of work described in this case include work on wheels and 'work of a similar character.'"

The record in that case indicated two Claimants were engaged in changing a wheel, and the other two were engaged in unloading cars. The Board concluded this work did not support a conclusion it was emergency work within the meaning of Rule 10.

Award 9348 cited by the Organization refers to Third Division Award 4354 and quotes the following comment:

"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."

Award 9348 sustained the Claims basically because the Board found the Carrier ignored specific allegations, thus failing to shift the burden back to the Organization. Likewise, in Award 10517, the Board found no evidence the Carrier specifically responded to the Claim that the work performed was "emergency road work."

Herein, the Organization claimed that on May 25, 1983, Claimant Schroeder was inspecting the Lake Mills, Iowa, grain train and had ordered two cars for bent handholds. Schroeder repaired the hand rails. Thereafter, he repaired two flat cars waiting to be loaded by Winnebago Industries. On May 26, Claimant Romig inspected loaded grain trains at Northwood and Lake Mills, Iowa. Inexplicably, the record shows Claimant Romig was, in fact, paid for all time claimed for May 26, 1983.

The Organization argues the bad order repairs and inspection of the cars had to be made before the cars could proceed enroute. Therefore, according to the Organization, since the Carrier has the responsibility of meeting the needs of its customers, the work must be deemed of an emergency nature. Except for contending the circumstances in this case are similar to Award 8146, the Carrier did not address these asserted particulars in its on-the-property handling. Furthermore, there is no probative evidence contained in the record which establishes the circumstances are, in fact, similar. As already noted, Award 8146 involved changing a wheel and unloading cars. This work was found akin to the work outlined in Rule 137 which included work on wheels and "work of a similar character."


This Board reiterates that not all the road work is necessarily emergency road work. However, where the work is asserted to be of an emergency nature accompanied by details, the Carrier cannot successfully rebut these contentions by merely saying it is not so. See Award 9348. The Claim of Carman Schroeder is sustained. Carman Romig has already been compensated for all hours presented for May 26, 1983.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 10th day of September 1986.