

Award No. 154

Docket No. 140

2-NP-CM-'37

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: Claim of L. E. Ryan, car repairer, that he should have been paid continuous time from time reporting for work at Billings, 11:00 P. M., November 21, until his return to Billings at 11:00 P. M., November 22, at pro rata rates.

JOINT STATEMENT OF FACTS: The parties jointly submitted the following statement of facts:

"Mr. Ryan was employed as car repairer at Billings, Montana, with hours of duty from 11:00 P. M. to 7:00 A. M. On November 21, 1935, he took service at 11:00 P. M. and at 12:30 A. M., November 22, he left Billings on train No. 2 to take care of a hot box. He accompanied train No. 2 from Billings to Glendive, arriving at Glendive at 5:40 A. M. He laid over at Glendive until 6:00 P. M., and deadheaded back to Billings on train No. 3, leaving Glendive at 6:00 P. M., which was the first available passenger train upon which he could return to Billings. He was compensated for eight hours from 11:00 P. M. until 7:00 A. M. on the basis that he would have performed service between these hours at Billings. He was paid straight time rates for the time consumed in riding back to Billings. He was not compensated for the eleven hours consumed in waiting at Glendive, namely: from 7:00 A. M. to 6:00 P. M.

Rule 11 of the current agreement between the Northern Pacific Railway Company and System Federation No. 7, Employees' Department, A. F. of L., Mechanical Section thereof, reads:

'Rule 11. An employe regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency work away from such shop, engine house, repair track, or inspection point, will be paid from the time called 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, Sundays and holidays, which will be paid for at the rate of time and one-half whether waiting, working or traveling.

If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours between the hours of 10:00 P. M. and 6:00 A. M., or during his normal rest period if employed on other than first shift, such release will not be paid for

provided that in no case shall he be paid for a total of less than eight (8) 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 Railway Company, actual necessary expenses will be allowed. Employes will be called as nearly as possible one (1) hour before leaving time, and on their return will deliver tools at point designated.

A wrecking service employe 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 Sundays and holidays, will be paid for at the rate of time and one-half."

POSITION OF EMPLOYEES: Rule 11 of the current agreement, between the Northern Pacific Railway Company and System Federation No. 7, Railway Employees' Department, A. F. of L., Mechanical Section thereof, has been quoted in the Joint Statement of Facts.

We contend the five (5) hour provision of the above rule was incorporated for the purpose of providing a minimum rest period for men on designated assignments whereby proper rest could be secured, for the continuation of the task to which assigned; that the five hour clause should be interpreted by the railway company to cover only bona fide rest period afforded while on a designated assignment and not time that may be consumed in waiting after the requirements of the particular assignment have been fulfilled. Car Repairer L. E. Ryan completed the work he was assigned to upon his arrival on train No. 2 at Glendive, and is entitled to pay on pro rata basis for all time waiting at Glendive, until arrival of train No. 3.

All data in support of the employes' position in connection with this claim has been presented to the carrier, and is made a part of the particular question in dispute.

POSITION OF CARRIER: The carrier contends that Ryan is not entitled to compensation for the 11 hours consumed at Glendive in waiting, on the ground that Rule 11 provides explicitly that the employe may be given a rest period of not less than five hours and not more than sixteen hours in each day of twenty-four hours, and not be compensated therefor. They argue that Rule 11 of the agreement should be read as it stands superseding all prior agreements or interpretations of such agreements. They, therefore, conclude that as Mr. Ryan was given eleven hours time off during which he could rest or sleep that under the terms of Rule 11, he is not entitled to compensation for such hours.

OPINION OF THE DIVISION: The issue in this dispute is whether or not Rule 11 of the agreement, hereinbefore quoted, relieves the carrier of any obligation to give compensation to an employe who was called for emergency work on the road for time consumed in waiting after the job he has been sent to work on has been completed.

The pertinent facts in this case are not disputed. The sole question is as to the interpretation of Rule 11.

In order that Rule 11 may be intelligently interpreted a review of its history is necessary.

Rule 11 is substantially the same as Rule 10 of the Shop Craft National Agreement. It then read as follows:

"Employes, except as the provisions of Rules 12 and 15 apply, sent out on the road for emergency service, shall receive continuous time from the time called until their return as follows:

Overtime rates for all overtime hours and straight time for the recognized straight time hours at home station, whether working,

waiting or traveling, except that after the first 24 hours, if relieved from duty and permitted to go to bed for 5 or more hours, they will not be allowed time for such hours, provided that in no case shall an employe be paid for less than 8 hours on week days, and 8 hours at one and one-half time for Sundays and recognized holidays, for each calendar day * * *."

It will be noted that the rule then provided that the employe was to receive compensation at straight time rate for straight time hours with overtime rate for overtime hours for the first 24 hours, when sent out on the road for emergency service, and that after the first 24 hours if the employe was relieved from duty for five hours, or more, he would not be compensated for the time he was allowed to rest. This rule was interpreted by the director general of railroads and by the United States Railroad Labor Board administrator and the interpretation is substantially as stated.

Rule 10 next appeared in the United States Railroad Labor Board's Decision No. 222, as Rule 10, and it appeared in the following form:

"Rule 10. An employe regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency road work away from such shop, engine house, 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 the practice at home station and straight time rate for all time waiting or traveling.

If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) 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 railroad, actual necessary expenses will be allowed. * * *"

It is notable that the only distinction between the original Rule 10 and the Rule 10 of Decision No. 222, just quoted, is that in the latter, the first twenty-four hour period was eliminated. In other words, the rule then had the same application for the first twenty-four hours as for the succeeding twenty-four hour periods. It no longer imposed the requirement that the employer must pay the employe for twenty-four consecutive hours before the employer could deduct any time for rest period during the twenty-four hour periods that followed.

The next significant interpretation of this rule is interpretation No. 2, to Railroad Labor Board Decision No. 222. This interpretation is the principal authority upon which the employes rely. It involved a case where an employe was sent out to perform emergency work. He arrived at the point where the work was to be performed and completed the job at 6:00 P. M. He was then compelled to wait for his train from 6:00 P. M. until 12:45 A. M., at which time he returned home. The Railroad Labor Board held that although the provision that the carrier must pay for a straight twenty-four hour service before allowing any rest period had been eliminated from Rule 10, the carrier could not escape its obligation to pay the employe for all time used in waiting for a train to return home, after the work had been completed.

For all purposes of the issues in this case Rule 11 of the agreement is identical to Rule 10 as interpreted by the United States Railroad Labor Board.

Therefore, the decision of the United States Railroad Labor Board entitled Interpretation No. 2 to Decision No. 222, is exactly in point and clearly sustains the contention of the employes.

We do not agree with the carrier that the interpretation placed upon Rule 10 by the United States Railroad Labor Board is erroneous and unwar-

ranted. In our opinion it is practical and sound. We believe it to be the fact that the five hour provision in Rule 10 and Rule 11 was originally incorporated for the purpose of providing a minimum rest period for men on assignments whereby proper rest could be secured to fit them for the continuation of the tasks to which they are assigned. It, therefore, seems unfair not to allow the employe payment for time consumed in waiting for a train to return to his home station after his job has been completed. Obviously, such waiting time is not being allowed by the carrier as a rest period, but is rather compelled by the circumstances. We recognize that there is no prior decision of this Division that serves as precedent in this case. We also recognize that a decision of the United States Railroad Labor Board is not binding upon this Division, but while not binding, it is persuasive and in this case we believe that the position of that Board with reference to Rule 10 should be followed.

The claim of the employes should be sustained.

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.

The parties to said dispute were given due notice of hearing thereon.

That under the provisions of Rule 11, the claim of L. E. Ryan, car repairer, that he should have been paid continuous time from time reporting for work at Billings, 11:00 P. M., November 21, until his return to Billings at 11:00 P. M., November 22, at pro rata rates, should be granted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1937.