

Award No. 575

Docket No. 592

2-B&M-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: Arthur Fitzpatrick should be compensated under the provisions of Rule 4 for traveling between Mechanicville and Troy (when driving an automobile), to cover a job away from his home point.

JOINT STATEMENT OF FACTS: There is in effect an agreement between System Federation No. 18, Railway Employees' Department, American Federation of Labor, and the Boston and Maine Railroad which became effective April 1, 1937. Rule 4 of that agreement reads:

Rule 4—Emergency Service

(a) For continuous service after regular bulletin hours, employees will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed.

(b) Employees shall not be required to work more than two (2) hours overtime without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

(c) Employees called or required to report for work and reporting but not used, will be paid a minimum of four (4) hours at straight time rates.

(d) Employees called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to do only such work as called for or other emergency work that is necessary to meet service requirements.

(e) Employees will be allowed time and one-half on minute basis for service performed continuously in advance of the regular working period with a minimum of one (1) hour, the advance period to be not more than one hour.

(f) Except as otherwise provided for in this rule, all overtime beyond sixteen hours of service in any twenty-four hour period, computed from starting time of employee's regular shift, shall be paid for at the rate of double time.

trip in each direction. The average speed (13 miles in 45 minutes) is about 18 miles an hour. They do not travel that slow.

If Rule 4 governs, then Section (e) of that rule says:

Employees will be allowed time and one-half on minute basis for service performed continuously in advance of the regular working period with a minimum of one (1) hour, the advance period to be not more than one hour.

and the minimum pay is one hour at time and one-half but that is not the way the claim was presented, as is evidenced by grievance sheet of April 24, 1940, copy submitted as "Carrier's Exhibit A," which plainly shows claim is advanced under Rule 9 of Agreement.

That Rule (No. 9) reads:

Employees sent out to temporarily fill vacancies at an outlying point or shop, or sent out on a temporary transfer to an outlying point or shop, will be paid continuous time from time ordered to leave home point to time of reporting at point to which sent, straight time rates to be paid for straight time hours at home station and for all other time, whether waiting or traveling. If, on arrival at the outlying point, there is an opportunity to go to bed for five (5) hours or more before starting work, time will not be allowed for such hours.

While at such outside point they will be paid straight time and overtime in accordance with the bulletin hours at that point, and will be guaranteed not less than eight (8) hours for each day.

Where meals and lodging are not provided by the Company, actual necessary expenses will be allowed.

On the return trip to the home point, straight time for waiting or traveling will be allowed up to the time of arrival at the home point.

Rule 9 pays continuous time from time ordered to leave home point to time of reporting at point to which sent, traveling time at straight time rate.

We offered to pay Fitzpatrick 45 minutes for getting from Mechanicville to Troy—13 miles—which is more than continuous time and as he was traveling, payment under Rule 9 was at straight time rates.

There is no support for the claim under any reasonable application of Rule No. 9.

The committee may say that driving an automobile is working and should be paid on same basis as if working as a machinist. Driving automobiles is not work covered by the agreement of April 1, 1937, Rule 48.

Fitzpatrick held no seniority rights at Troy; he was sent there to fill vacancy of men taking lay off day under New York State Law.

Rule 9 specifies how a man shall be paid under such circumstances. Fitzpatrick was paid in accordance with that Rule.

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 employees 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.

The dispute involves the application of proper rule for payment of travel time.

The evidence of record in the instant case justifies a settlement under Rule 9 of the current agreement.

AWARD

Claim will be adjusted in accordance with provisions of Rule 9.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1941.

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