

Award No. 828

Docket No. 743

2-SP(PL)-EW-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES: That Electrical Worker J. J. Fyock, be compensated at straight time rate for services performed on May 17, 1937, beginning at 7:15 P. M. to 8:00 A. M., May 18, 1937, for traveling from Portland, Oregon, to Medford, Oregon, under provisions of Rule 12 of agreement effective February 16, 1937.

EMPLOYEES' STATEMENT OF FACTS: Electrical Worker J. J. Fyock, is regularly employed in the maintenance of way electrical department on the 8:00 A. M. to 4:30 P. M. shift, with headquarters at Brooklyn shops, Portland, Oregon, which shift he worked on May 17, 1937. On May 17, 1937, Mr. J. J. Brady, electrical foreman, ordered Electrical Worker J. J. Fyock on or about 4:30 P. M. to leave Portland, Oregon, on train 329, at 7:15 P. M. for Medford, Oregon, to perform electrical work at said point; who arrived there at 8:15 A. M., May 18, 1937. The carrier provided Electrical Worker J. J. Fyock with transportation and berth from Portland Oregon to Medford, Oregon, May 17 and 18, 1937.

Electrical Worker J. J. Fyock's working hours at Medford, Oregon, were the same as at his home point, Brooklyn shops, Portland, Oregon (8:00 A. M. to 4:30 P. M.).

For traveling from 7:15 P. M., May 17, 1937, to 8:15 A. M., May 18, 1937 the carrier paid Electrical Worker J. J. Fyock at the rate of 81½¢ per hour for fifteen minutes—from 8:00 to 8:15 A. M., May 18, 1937, which was considered by the carrier as a portion of said employee's regular hours at his home point.

POSITION OF EMPLOYEES: It is the contention of the employees that traveling from Portland, Oregon, to Medford, Oregon, is necessary service, incident to the performance of the work assigned at Medford, Oregon, which is clearly recognized by the provisions of Rule 12 (a) reading as follows:

"... straight time for all time waiting and traveling."

It is further contended that the assignment required Electrical Worker J. J. Fyock to leave both his home point and his home for the period in question and that the berth provided him on train 329 certainly does not alter the fact that he was traveling and thus rendering service, clearly within the meaning of the above quoted rule.

under Rule 12 (a), supra. The basis for this contention or position is not comprehended by the carrier. The petitioner prescinds entirely from the language of Rule 12 (a), namely, "Except as provided in paragraph (b) of this rule . . ." and the specific language of Rule 12 (b). The carrier submits that the petitioner is in error in contending that Rule 12 (a) is applicable.

As to the requirement contained in the second part of Rule 12 (b), namely, "under such circumstances when meals and/or lodging are not provided by the company, actual necessary expenses for meals and/or lodging, will be allowed." Paragraph 4 of the carrier's ex parte statement of facts establishes that the claimant was reimbursed for his Pullman accommodation purchased by him in order that he might go to bed while traveling on train 329 between Portland and Medford during that period of time from 7:15 P. M., May 17 to 8:00 A. M., May 18, and in addition thereto, he was allowed actual necessary expenses for meals.

CONCLUSION: The carrier having conclusively established that Rule 12 (b) is applicable to the alleged claim in the instant case and that the said rule was in all respects complied with, and having further established that the petitioner has not established and cannot now establish that there is any merit to the alleged claim, the carrier respectfully submits that it is incumbent upon the Board to deny the alleged claim.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

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.

The evidence of record supports the conclusion that the circumstances here involved are governed by the general provisions of Rule 12 (a), and do not fall within the exceptions of Rule 12 (b).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.