Award No. 874
Docket No. 784
2-B&OCT-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee H. B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 130, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

THE BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreement, Rules 5 and 8 thereof, carmen when required to service a train from Chicago, Illinois, to Garrett, Indiana, be compensated for all time at Garrett, Indiana, since August 7, 1941, at the rates of time and one-half and double time.

JOINT STATEMENT OF FACTS: Carmen are regularly employed at Chicago, Illinois, coach yard from 8:00 A. M. to 4:00 P. M. On various occasions since August 7, 1941, certain of such carmen were assigned to ride Baltimore and Ohio passenger trains from Chicago to Garrett, Indiana, and return. They were relieved at Garrett without pay from 7:00 P. M., after arrival of Train No. 6, until 5:00 A. M., at which time they prepared to return on Train No. 5. This train is scheduled to arrive at Garrett, Indiana, at 5:31 A. M. They were paid time and one-half from 4:00 P. M. to 7:00 P. M. and only time and one-half from 5:00 A. M. to 8:00 A. M.

POSITION OF EMPLOYES: It is the position of the employes that all carmen who have been required to ride Train No. 6 from Chicago, Illinois, to Garrett, Indiana, and to return to their home point on Train No. 5 should be compensated in accordance with the provisions of Rule No. 5 of the existing agreement which reads in part as follows:

> "For continuous service before or after regular working hours, employes will be paid time and one-half on the actual minute basis.
>
> Except as otherwise provided for in this rule, all overtime beyond sixteen hours' service in any twenty-four-hour-period, computed from starting time of employes' regular shift, shall be paid for at rate of double time."

We further contend that these carmen are, as provided in Rule No. 8 of the existing agreement which reads as follows:

> Hourly rated employes sent out on road away from home station for wrecking, or other emergency service, shall receive pay in accordance with straight time and overtime rules in effect at home station, from time called until return, except if relieved from duty and per-

In Award No. 360, the claim of the employes was similar to that covered by Award No. 154, and the claim was sustained in accordance with that prior decision.

As is set forth hereinbefore, the employes were paid six hours at time and one-half for the road service involved, which covered three hours from 4:00 P. M. to 7:00 P. M., and three hours from 5:00 A. M. to 8:00 A. M. Rule No. 8 stipulates that the time off duty of five hours or more will not be paid for "provided the employee has been allowed not less than eight hours per day while held away from home station." In the instant case, the road service of the carmen involved did not prevent their fulfilling their regular assignment at their home station. They were allowed to work their regular assignment before starting road service and after their return from road service.

The rule involved had its origin in Rule No. 10 of Addendum 6 to Decision 222 of the United States Railroad Labor Board, and Interpretation No. 2 to this decision has been used as the basis for interpreting the rule. Rule 10 of Addendum 6 to Decision No. 222 has been quoted in the foregoing. The rule quoted makes plain that the provision for eight hours pay for road service in the rule applies, "when such irregular service prevents the employee from making his regular daily hours at home station." Therefore, the eight hour provision for road service referred to in the rule has application only when such service prevents the employe from working his regular shift at home station. In the instant case the employes were not away from home for a day, nor did the road service prevent their getting paid for working their regular assignment before and after the road trip.

The carrier maintains that in the circumstances involved in this dispute, where the employes were assigned to again go on duty at the outside point after being relieved for rest for a period of ten hours, Rule No. 8 specifically provides that such time off duty will not be paid for, and that this interpretation of the rule is in exact accord with the decision of the United States Railroad Labor Board and the several awards of your Board referred to above.

The claim of the employes is without support or merit and should be denied.

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.

Under the facts contained in this record it is found that the time spent at Garrett between Train No. 6 and Train No. 5 was waiting time, and the carrier cannot avoid payment for waiting time of this kind under the exception contained in Rule 8 relating to relief from duty. See Awards 154, 360, 828, 829 and 873.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1942.