

Award No. 912

Docket No. 869

2-L&N-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That C. H. Mullinax, carman, Etowah, Tenn., shall be compensated at the rate of a four hour call each day, July 18 and July 31, 1942.

EMPLOYEES' STATEMENT OF FACTS: On July 18, 1942, C. H. Mullinax, was called at 4:17 A. M., by Car Foreman Bell, to go to Murphy, North Carolina, to inspect a car.

On July 31, 1942, Mullinax was called at 5:19 A. M., by Car Foreman Bell to go to Culbertson, North Carolina, to inspect a car.

On the trip to Murphy, North Carolina, on July 18, Mullinax arrived at Murphy at 7:00 A. M., worked until 2:00 P. M., and arrived back at Etowah, Tennessee, at 4:30 P. M. For this service, Mullinax was paid twelve hours and fifteen minutes at straight time rate.

On the trip to Culbertson, North Carolina, on July 31, Mullinax arrived at Culbertson at 7:30 A. M., and worked until 10:30 A. M., returning to Etowah, Tennessee, at 1:30 P. M., and worked until 3:30 P. M., his regular quitting time. For this service, he was paid ten hours and eleven minutes at straight time rate.

Carman C. H. Mullinax is regularly assigned on the repair track at Etowah, Tennessee, and his regular assigned hours are from 7:00 A. M., to 12:00 noon, 12:30 P. M., to 3:30 P. M., with thirty minutes for lunch from 12:00 noon, to 12:30 P. M.

In each instance, Carman Mullinax drove his automobile to Murphy, North Carolina, and Culbertson, North Carolina, and return to Etowah, for which he was allowed three cents per mile for the use of same.

POSITION OF EMPLOYEES: Inasmuch as Mullinax was called on both days in question outside of his regularly assigned bulletined hours, it is the contention of the employees that Mullinax should have been allowed a four hour call each day for such time as he was called and reported for work before 7:00 A. M., his regular starting time, in accordance with Rule 6 of the current agreement, governing calls, which reads as follows:

The employees have also stated:

"It has been the customary practice at Etowah, prior to a short time before this claim originated, to compensate employes called outside of their regular bulletined hours to go on line of road that they be compensated with a four hour call."

That may have been done, in fact we have information that it was done at Etowah, despite the uniform practice dating back to October, 1922, of allowing payment for such service in accordance with Rule 7 (a). This was due to mishandling on the part of the local forces. As soon as the master mechanic at Corbin, Kentucky, who has jurisdiction over the employes at Etowah, discovered the error, he reminded those responsible that the proper method of payment was under Rule 7 (a). Upon calling the attention of Assistant Master Mechanic Berry, Etowah, to the erroneous payments, Mr. Berry replied:

"The only reason I can offer for paying these men under Rule 6 instead of Rule 7 was that when they got in the A. F. L., they claimed this time and the foreman approved cards for whatever they claimed and sent them to this office and the clerk who mailed the cards in from this office did not know that they were not entitled to the four hour call for this service."

When it is found that improper payments have been made by the local people, the error should be corrected and not perpetuated.

The employes stated further:

"Also, it is the customary practice to compensate motor car operators and employes sent out on line of road, where using their automobiles, at time and one-half rate, outside of regular bulletined hours."

As to this feature: Some years ago instructions were issued by this carrier to the effect that time consumed by employes traveling on rail motor car would be considered as hours worked. This for the reason that the employes are required to lift these motor cars on and off track to avoid approaching trains, throw switches, watch out for signals, etc. These conditions do not exist when an employe is traveling by automobile and the instructions plainly do not apply.

In support of our position that payment of straight time under Rule 7 (a) of the agreement was proper in this case, we respectfully refer you to Decision No. 222, Docket 475, United States Labor Board, involving rules and working conditions of approximately one hundred railroads. In commenting on Rule 10, which is identical with our present Rule 7 (a), that Board said:

"When men are sent out on the road for emergency service, or to fill temporary vacancies, it is certainly just and reasonable to pay them straight time for all time traveling or waiting, and for all time worked, straight time for straight-time hours, and overtime for overtime hours in accordance with the practice at the home station or at the point where they are temporarily employed."

In this case Mr. Mullinax was used in emergency road service. He was paid straight time for all time traveling in that service; therefore, it is the position of this carrier that the claim of the employes is without 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.

The time spent by C. H. Mullinax going to and returning from Murphy, N. C., and Culbertson, N. C., was traveling time in emergency road service, and governed by Rule 7 (a) which specifically provides that traveling time in such service will be paid at straight time rate.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.