

Award No. 1455
Docket No. 1372
2-C&NW-CM- '51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carman Wilson M. Bottorff is entitled to be compensated at the time and one-half rate on April 12, 1950 from 5:00 P. M. to 9:30 P. M. in lieu of straight time and accordingly the Carrier be ordered to additionally compensate him in this manner for the aforesaid time.

EMPLOYEES' STATEMENT OF FACTS: Carman Wilson M. Bottorff, hereinafter referred to as the claimant, is employed on the 7:30 A. M. to 4:30 P. M. shift at Norfolk, Nebraska. On April 12, 1950 the claimant, upon instructions of his car foreman, loaded all necessary tools in his automobile for the purpose of loading a wrecked tank car on to a flat car at Long Pine, Nebraska, which is approximately 132 miles from Norfolk, Nebraska. The claimant left Norfolk at 7:30 A. M. on April 12, 1950, in his automobile, transporting with him Carman Helper Cecil Donneau and Car Foreman George Lang. Upon arrival at Long Pine, Nebraska, the claimant, under the supervision of Car Foreman Lang, completed the loading of damaged tank at 5:00 P. M. Upon completion of the loading of all tools, etc., in the claimant's automobile, they departed from Long Pine, Nebraska at 5:00 P. M. and arrived at Norfolk at 9:30 P. M. For driving the car, transporting the other employes and material, the claimant was only allowed 4½ hour's pay at straight time rates.

This case was handled from the bottom to the top with carrier officials designated to handle these affairs, who all decline to adjust this matter.

The agreement effective July 1, 1921, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant, while acting in the capacity of a chauffeur transporting employes and material in his private car, was entitled to be compensated from 5:00 P. M. to 9:30 P. M. at the time and one-half rate in accordance with Rule 10 of the controlling agreement, in part reading:

POSITION OF CARRIER: The traveling in his automobile by Carman Wilson M. Bottorff on Wednesday, April 12, 1950, was not travel time on a rest day or holiday which rest day and holiday travel is paid for at the rate of time and one-half under provisions of the first paragraph of Rule 10 quoted above. Neither was he a wrecking service employe entitled to compensation at rate of time and one-half for traveling on week days after the recognized straight time hours at home station under provisions of the last paragraph of Rule 10. The time spent by Wilson M. Bottorff, including that outside his assigned hours at his home station, in going to and returning from Long Pine on Wednesday, April 12, 1950, was traveling time in emergency road service on other than a rest day or holiday and was subject to the provisions of the first paragraph of Rule 10 which specifically provides that such traveling time will be paid for at straight time rates.

It is the position of the carrier that, with the exception of wrecking service employes, who are paid rate of time and one-half for traveling after straight time hours at home station, all other classes of employes coming within the scope of the agreement between the carrier and the federated craft organizations, required to drive their own automobiles (for the use whereof a mileage allowance is made) as a means of transportation in connection with the performance of emergency road work as referred to in Rule 10 of the agreement, are under provisions of that rule only entitled to compensation at straight time rate for all of such travel time, except on rest days and holidays. In that connection, attention is invited to Second Division, National Railroad Adjustment Board, Award No. 912, dated June 7, 1943, denying a claim for overtime compensation to a mechanic for travel time in his automobile during overtime hours, which claim involved the provisions of a rule similar to the first paragraph of Rule 10 quoted above and which claim was based on a contention that driving an automobile is actual work and not travel time within the meaning of the emergency road service rule.

It is the further position of the carrier that the claim of the employes is not supported by rules of agreement between the carrier and the federated craft organizations and therefore cannot consistently nor properly 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.

Claimant, Carman Wilson M. Bottorff, is regularly assigned at Norfolk, Nebraska, 7:30 A. M. to 4:30 P. M. On April 12, 1950, he was directed to go to Long Pine, Nebraska, for the purpose of loading a wrecked tank car on a flat car. He drove his own automobile for transportation and carried tools and two other employes with him. He was paid a mileage allowance for the use of his automobile. The work was completed at 5:00 P. M. Claimant spent the time from 5:00 P. M. to 9:30 P. M. in driving back to Norfolk for which he was paid 4½ hours at the straight time rate. Claimant contends that in operating his own car he was performing work as distinguished from travel time as defined by Rule 10, Federated Crafts' Schedule Agreement in effect on April 12, 1950, for which he demanded the time and one-half rate of pay.

For the reasons stated in Award No. 912 and Award No. 1454 (Docket No. 1371), the latter being decided herewith, no basis for an affirmative award exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1951.