

Award No. 1637
Docket No. 1539
2-CRI&P-CM-'53

**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. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: (a) That this Carrier on October 22, 1951 violated the controlling agreement and particularly Rule 11 by the arbitrary release of Carmen E. B. Reilman, A. N. Greenstreet and D. M. Bagwell, Jr., subsequent to completing their assignment at Guymon, Oklahoma.

(b) That Carmen E. B. Reilman, A. N. Greenstreet and D. M. Bagwell, Jr., be compensated for an additional twenty-one (21) hours each at the applicable straight time rate of 1.849 per hour.

EMPLOYES' STATEMENT OF FACTS: Carmen E. B. Reilman, A. N. Greenstreet and D. M. Bagwell, Jr., hereinafter referred to as the claimants, are regularly assigned at Dalhart, Texas, with assigned hours beginning at 8:00 A. M. to 5:00 P. M.

On the morning of October 22, 1951 these claimants were notified to secure the necessary tools and proceed by truck to Guymon, Okla., to apply wheels to M.D.T. Refrigerator No. 10828.

The claimants left Dalhart, Texas at 10:30 A. M. October 22, 1951, arriving at Guymon at 12:30 P. M., completing their assignment at 6:00 P. M. October 22. They were then notified by the ticket agent at Guymon that on completion of their assignment they would be released from duty until 8:00 A. M., October 23, 1951, which is affirmed by letter submitted herewith and identified as Exhibit A.

The Agreement effective October 16, 1948 is controlling.

POSITION OF EMPLOYES: The question involved in this dispute is the alleged arbitrary right of the carrier to relieve the claimants subsequent to the completion of their assignment at Guymon, Oklahoma, October 22, 1951.

It is the position of the employees that from the time the claimants in this dispute were relieved from duty at 6:00 P. M., October 22, 1951, subsequent to the completion of that particular assignment and until the time they were again returned to service at 8:00 A. M., October 23, 1951, such

In Award 828 (Southern Pacific Company) the claim is, "... for service performed on May 17, 1927" and "... for traveling from Portland, Oregon, to Medford, Oregon ..." That claim was then allowed on the basis of the general provisions of Rule 12 (a). The instant claim is based upon the provisions of our Rule 11. It will be noted, too, that the period claimed in the instant case is a rest period and not waiting and traveling.

Award 829 (Southern Pacific Company) is evidently a companion case to the above and was sustained on the basis of provisions of the same Rule 12 of their agreement. Needless to say, the facts of that case are quite dissimilar to those of the instant dispute.

The employees in Award 873 (Omaha Railway Company) base their contentions on the following from their Position:

"In this case, the management of the Omaha Railroad violated the agreement by starting these men away from their home station at a time other than that provided for in the agreement, and having been guilty of this violation, should have willingly compensated these men in accordance with Rule 14T for the additional time that they were required to be away from home on this account."

It is unnecessary to point out to your Board the difference in the facts of this dispute as compared to the present case. Again that claim was sustained under the provisions of Rule 14 of their agreement which outlines, "Employees ... shall be paid continuous time from the time of leaving home station ..." We have pointed out above the difference in the applicable Rock Island agreement rules. However, the Board, here, after citing other awards, including 828, takes cognizance of the fact that relief may be necessary for the employees as a rest period.

In each of the cases cited by the employees there was no question of employees resuming work after rest. In the instant case, rest was necessary to resume duty at Optima. "Emergency road service" was not completed until the claimants finished work at Optima, and it was proper to not pay the employees from 6:00 P. M. October 22, to 8:00 A. M. October 23, as they were released under Rule 11 to resume emergency road service at Optima. (See Award 1429).

Reviewing again the provisions of Rule 11 of the effective agreement we are convinced that the claimant's time was computed strictly in accordance with that rule.

Inasmuch as this claim is without support in the agreement, we respectfully petition the Board to deny it.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

Claimants were regularly assigned as carmen at Dalhart, Texas, with assigned hours 8:00 A. M. to 5:00 P. M. On October 22, 1951, they were required to proceed by truck to Guymon, Oklahoma, to apply wheels to a refrigerator car. They arrived at Guymon at 12:30 P. M. on October 21, 1951, and completed their work at that point at 6:00 P. M. on October 22 following. They were then released until 8:00 A. M. on October 23, 1951, and required to go to Optima, Oklahoma, to perform additional emergency work and

returned home. Actual expenses for meals and lodging were paid by the carrier while claimants were away from their home point. Claimants contend they should be paid from 6:00 P.M. on October 22, 1951, to 8:00 A.M. on October 23, 1951, as waiting time under Rule 11, current agreement which in part provides:

"All time waiting and travelling outside of assigned hours at home point will be paid for at one and one-half times pro-rata rates." (Rule 11 (a))

"If during the time on the road, not including waiting or traveling periods, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief periods will not be paid for; . . ." (Rule 11 (c)).

The question to be determined is whether or not the period involved is waiting time under Rule 11 (a) or a relief period under Rule 11 (c). The record shows that claimants were required to travel to Guymon in emergency road service. Before their work was completed at Guymon, additional emergency road service work existed at Optima. The agent at Guymon was informed of this fact and was directed to relieve claimants when they finished work at Guymon and send them to Optima the next morning. This procedure was followed and resulted in the dispute as heretofore outlined.

We point out that Rule 11 (a) provides that an employe regularly assigned at a shop, engine house, repair track or inspection point, when called for emergency road service away from his home point, will be paid from the time ordered to leave home point until his return. Waiting and traveling time outside of assigned hours at home point are to be paid at overtime rate. Rule 11 (c) contains an exception to the effect that during time on the road, exclusive of waiting or travelling periods, if a man is relieved for rest for five hours or more, such period will not be paid for. It seems clear to us that claimant's emergency road service began when they left their home point and ended when they were returned to their home point. This being true, claimant's emergency road service cannot be said to have ended when they completed their work at Guymon. The exception in Rule 11 (c) is therefore applicable and the rest period need not be paid for.

We quite agree that if an employe is held over after the work is completed that it will be construed as waiting time. Awards 1028, 874. But where rest of five hours or more can be had after leaving and before returning to his home point, outside of assigned hours and waiting and travelling time, the exception applies and the employes are not entitled to pay for such time under the rule. Awards 1429, 1557. The terminal points of the road emergency service covered by the rule are the time of leaving and the time of returning to the home point. The fact that emergency work may be done on different pieces of equipment at different times is not a factor in determining the meaning of the rule. Claimants were correctly paid.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.