

Award No. 2561

Docket No. 2272

2-GN-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Carmen)**

GREAT NORTHERN RAILWAY CO.

DISPUTE: CLAIM OF EMPLOYEES:

"1. That under the current agreement Carman Helper Fred Kirchner was not properly compensated when called at 5:00 A.M. to report for work at 6:00 A.M. for service prior to regular starting time of 7:00 A.M. on February 5, 1955, for which he was allowed 1½ hours at the straight time rate.

2. That accordingly the Carrier be ordered to properly compensate Carman Helper Fred Kirchner for such service by payment of a call (4 hours)."

EMPLOYEES' STATEMENT OF FACTS: On February 5, 1955, Carman Helper Fred Kirchner, hereinafter referred to as the claimant was called at 5:00 A.M. to report for service at 6:00 A.M. to operate the snow broom. The regular starting time of the claimant's shift was 7:00 A.M. Claimant did report for work at 6:00 A.M. and operated the snow broom until 7:00 A.M. and for such service he was paid 1½ hours at the straight time rate.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: Rule 17, captioned "Overtime" reads as following:

"(a) All service performed outside of bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

that the employe was properly paid under the provisions of Rule 17(f) as directly applicable to the undisputed facts as shown in this case.

The carrier holds that a study of the two rules by your Board can only result in the inescapable conclusion on your part that Rule 17 (f) constitutes a specific exception to Rule 17 (e) or that, in other words, Rule 17 (e) covers services calls in cases where the service for which called is either not continuous with the hours of the regular assignment or where the advance period for which called exceeds one hour. Unless this be your conclusion, then Rule 17 (f) cannot be held to have any meaning whatsoever. Rules are not negotiated, agreed upon and placed in agreements without there being a definite purpose and use for such rule.

On the other hand, some of the correspondence exchanged in this case might be construed as indicating that the employes were basing their claim upon a misconstruction of the wording and intent of Rule 17 (f). In a letter under date of June 22, 1955, General Chairman Vickers in writing to Superintendent Cameron states:

"It is our position that service for which one is called in excess of one hour prior to the regular starting time, constitute a call under the provisions of Rule 17 (e) and should be paid as provided therein."

From this it might be construed that the claim is based upon the fact that the claimant herein was called by telephone and instructed to report at 6:00 A.M. instead of 7:00 A.M.

The carrier again refers your Board to the wording of Rule 17 (f) wherein it will be noted there is nothing said about calling nor does the word "call" or "calling" in any way appear in the rule which specifically provides for the payment of service performed continuously in advance of the regular working period and not for being called in advance of the working period.

Furthermore, any such construction as the employes would appear to be trying to place on the rule in the above quoted portion of the June 22, 1955 letter could only lead to absurdities since carrying their contention, if it be such, to a logical conclusion could only be held to mean that if an employe were instructed prior to discontinuing work at say 4:00 P.M. one day to report an hour in advance of his regular time the next day, his time would be continuous from 4:00 P.M., assuming that to be his assigned quitting time, until his assigned starting time the next day. This very obviously is in no way the intent of the rule, nor has it ever been so construed or even contended up to this time.

The carrier, therefore, holds that the claimant herein was properly compensated for time worked under the provisions of Rule 17 (f) inasmuch as the payment was for "service performed continuously in advance of the regular working period" and that the advance period worked was "not more than one hour" and that, therefore, this claim must 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.

Claimant performed one hour of service in advance of and continuous with his regular working period and was properly compensated in accordance with Rule 17 (f). That rule does not provide for nor restrict the time or method of notification to employees to perform such advance service. The fact that he was notified by telephone to perform such service does not transform it into a "service call" governed by Rule 17 (e).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2561

The majority ignores the fact that the claimant was "called" at 5 A.M. and should therefore have been compensated under Rule 17 (e) which requires that "Employees called or required to report for service and reporting, will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less . . ."

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink