

Award No. 4269

Docket No. 4068

2-GN-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the Carrier failed to compensate Carmen Charles Meismer and Roy Jukulen for time waiting to return to home point on May 31, 1960, and

2. That accordingly, the Carrier be ordered to compensate Carmen Charles Meismer and Roy Jukulen fifteen and one-half (15½) hours at time and one-half rate for May 31, 1960.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, employs Carmen Charles Meismer and Roy Jukulen, hereinafter referred to as the claimants, at Great Falls, Montana with assigned hours of duty from 7:30 A. M. to 4:00 P. M. thirty minutes for lunch.

On May 31, 1960, claimants were instructed by their supervisor to proceed by company highway truck to Helena, Montana to rewheel car BAP 2565 and upon completion of such work assignment that if time did not permit their return to home point at Great Falls by their quitting time, they were to remain at Helena until 7:30 A.M. the following morning and return to Great Falls during the hours of their assignment at home point.

The duty assignment to be performed at Helena was completed by the claimants at 3:00 P. M., thereby precluding their return to Great Falls by 4:00 P. M., a distance of one hundred miles. In conformity with instructions of their foreman, claimants remained at Helena over night — waiting until 7:30 A. M., June 1, 1960 to begin their return to Great Falls.

Carrier has refused to compensate the claimants for the time spent in waiting at Helena from 4:00 P. M. May 31, 1960 to 7:30 A. M. June 1, 1960 — a period of fifteen and one-half (15½) hours.

This dispute has been handled with all carrier officers designated to handle such matters, all of whom have declined to adjust it.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. It is the fundamental right of the carrier to assign carmen on road trips in whatever manner is necessary or desirable, except as that freedom has been limited by law or some clear and unmistakable language in the collective bargaining agreement.
2. The Organization agrees that the claimants were subject to Schedule Rules 22(a) and 22(b) while performing the work involved in this case.
3. Rule 22(b) clearly allows employees on ordinary road trips to be tied up for a non-compensated rest period of more than five hours at any time "during the time on the road."
4. The lack of limitations on the maximum length of the non-compensated rest period and the time it may be assigned under Rule 22(b) contrast sharply with the more restrictive provisions for assigning rest periods to wrecking service employees under Rule 22(c).
5. The claimants were tied up for overnight rest periods under Rule 22(b) in conformance with the carrier's responsibility and duty to operate its business in a safe, efficient and economical manner.
6. The organization's contentions that rest periods must be given before freight car repairs are completed and then only in the employee's own discretion without any regard for the safety and economy of operations, are obviously illogical, absurd and wholly unsupported by any language in the agreement.
7. The Carrier's interpretation of Rules 22(a) and 22(b) is supported by past practice failure of the organization to appeal the decisions of the carrier which reject previous similar contentions by this organization.
8. Award No. 1637 of this Board, involving rules, facts, and issues directly in point, supports the carrier's position and should be followed in this case.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees 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 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.

Parties to said dispute were given due notice of hearing thereon.

On May 31, 1960 Claimants were ordered to proceed by Carrier's Highway truck to Helena Montana to rewheel a car. They were instructed that if, after completion of the work, they were unable to return to home point by their regular quitting time, to remain at Helena until 7:30 A.M. the following day and then depart for Great Falls.

Claimants completed their work at 3:00 P. M., precluding a return to Great Falls by 4:00 P. M., and tied up at Helena, departing for Great Falls at 7:30 A. M. June 1, 1960.

Claimants allege that under Rule 22(a) of the controlling agreement, they are entitled to fifteen and one-half (15½) hours' overtime for the waiting time at Helena.

Carrier's contention is that this period was time relieved from duty under Rule 22(b), and that Claimants have already been properly compensated.

Rule 22(a) reads as follows:

"Other than as provided in paragraph (b) of this rule, an employe regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency road work away from such point, will be paid for all time from time ordered to leave home station until his return as follows: for all time waiting or traveling, straight time rate during home point working hours, time and one-half during home point overtime hours; for all time working, straight time rate during home point working hours, overtime rate as per Rule 17 during home point overtime hours."

Rule 22(b) reads as follows:

"If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that, in no case, shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from working his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. Employees will be called as nearly as possible one (1) hour before leaving time and on their return, will deliver tools at point designated."

It is Claimants' position that the emergency road work having been completed, the time spent at Helena thereafter could not be considered time relieved from duty under Rule 22(b).

Numerous awards of this Division have been cited, and both Claimants and Carrier cite our Award 1637 as persuasive to their positions.

In that award we held (under similar rules) that emergency road service began when claimants left home point, and ended when they returned to home point; and that when rest of five hours or more can be had after leaving and before returning to home point, **outside of assigned hours and waiting and traveling time** the exception applies and the employees are not entitled to pay for such time under the rule.

We find this to be a correct interpretation of the Rules now before us and accordingly determine that the fifteen and one-half (15½) hours spent at Helena was time relieved from duty within the meaning of Rule 22(b), and need not be paid for.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4269

The majority has not quoted the pertinent part of the holding from Award 1637 and has misinterpreted what they did quote. There it was held as follows:

"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 traveling time, the exception applies and the employes are not entitled to pay for such time under the rule * * * 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 * * *"

In other words the claimants were held over at Helena after the work was completed and such time constituted waiting time so the exception which applies outside of waiting time does not apply and the employes are entitled to compensation as claimed.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink