Award No. 4290
Docket No. 4046
2-UP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That on May 23rd, 1960 at Omaha Shops the Carrier failed to properly compensate the Claimants, when they did not pay them from 8 A.M.

(2) That, accordingly, the Carrier be ordered to compensate the following claimants in the amounts shown opposite their names:

Troy Cotner — 2 hours	Henry Pietramele — 1 hour
Lawrence Bonacci — 2 hours	Harry Harris — 2 hours
Michael Mischo — 1 hour	Robert Henry — 1 hour
Harold Naylor — 1 hour	Harold Price — 1 hour
Herbert Gibreal — 1 hour	

EMPLOYES' STATEMENT OF FACTS: Troy Cotner, Lawrence Bonacci, Michael Mischo, Harold Naylor, Herbert Gibreal, Henry Pietramele, Harry Harris, Robert Henry and Harold Price, hereinafter referred to as the Claimants, are employed as Carmen in the Omaha Shops on the Union Pacific Railroad Company, hereinafter referred to as the Carrier.

On May 20, 1960 the General Car Foreman notified the Local Chairman, in the usual manner, to recall twenty-two furloughed employes to work effective May 23rd. The nine claimants were among those recalled; they had been furloughed less than six months and, therefore, required no physical examination. In the usual manner, the Local Chairman, who has been performing this duty since 1938, notified the claimants to report to the office of the Superintendent of the Shops at 8 A.M.

The carrier, on this morning, had one clerk handling the processing of these employes which requires the checking of personnel records of each employe, signing of several documents, receiving rule books and goggles etc., all of which are requirements of the carrier. This same procedure has been followed for many years but never have the employes been subjected to being docked their pay for such service.

reported for work to the General Car Foreman. They were not entitled under the agreement to any additional compensation for time which they may have spent participating in processing for return to work or in waiting for such processing. The claims are without merit under the agreement 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.

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

The Claimants, L. Bonacci, T. Cotner, H. Gibreal, H. Harris, R. Henry, M. Mischo, H. Naylor, H. Pietramele, and H. Price, were employed by the Carrier as carmen at its Omaha (Nebraska) Shops but were furloughed because of a reduction in the working force. Upon request of the Carrier's General Car Foreman, the Local Chairman of the Organization notified twenty-two furloughed employes, among them the Claimants, that they were recalled to active service as of May 23, 1960. Pursuant to such notice, the Claimants reported for work to the Chief Clerk at or about 8:00 A.M. on said day. The latter gave them an order to the Personal Record Clerk who checked whether they had been on furlough for more than six months in which case it would have been necessary for them to submit to a physical examination. It was found that none of them needed such an examination. Thereafter, the Personal Record Clerk checked their current addresses and telephone numbers as well as their insurance coverage. He then made out the necessary forms for income tax purposes and issued rule books, eye shields, and employment slips (Form 5039) to the Claimants. They took those slips to the General Car Foreman who noted on them the reporting time. They received no pay for the time spent during the above described processing procedures which consumed a considerable period of time.

They filed the instant claim in which they contended that the Carrier failed properly to compensate them on the day in question. They requested compensation in the amount of one hour each at the pro rata rate, except Bonacci, Cotner, and Harris who requested compensation in the amount of two hours each at the pro rata rate. The Carrier denied the grievance.

In support of their claim, the Claimants primarily rely on Rule 1 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "Eight hours shall constitute a day's work. All employes coming under the provisions of this agreement . . . shall be paid on the hourly basis."

1. The parties seem to see this case as requiring decision as to whether the First Sentence of Rule 1 contains a daily guaranty of eight hours' work. However, we need not and do not pass upon that question. The narrow issue which emerges in this case is solely whether the time spent by the Claimants during the processing procedures under consideration constituted time worked.

Moreover, the Claimants were not newly hired employes. They were inactive employes who were restored to active duty in accordance with their contractual recall rights as prescribed in Rule 27 of the labor agreement.

Hence, our Award does not, and should not be read to, define the rights of newly hired employes, nor do the facts underlying this case require a ruling regarding the rights of employes who are obligated to submit to a physical examination and we express no opinion on this question.

2. In the absence of a contractual definition, as is here the case, the terms "time worked" or "hours worked" generally refer to time spent by an employe in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business. See: Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U. S. 590, 598; 64 S. Ct. 698, 703 (1944); Jewell Ridge Coal Corp. v. Local No. 6167, 325 U. S. 161, 164-166; 65 S. Ct. 1063, 1065-1066 (1945); Anderson v. Mt. Clements Pottery Co., 328 U. S. 680, 691-692; 66 S. Ct. 1187, 1194 (1946); Award 3955 of the Second Division. It follows that working time is not limited to the hours spent by an employe in actual productive labor but includes other time given by him to the employer, provided such time is spent necessarily and primarily in the interest of the latter. In determining whether such other time constitutes time worked it is of special significance whether the employe is required to be on the employer's premises or at a prescribed workplace.

Applying the above principles to this case, we have reached the following conclusions:

It is beyond dispute that the Claimants were required to remain on the Carrier's premises during the entire processing procedures in question. They were also required successively to report to the Chief Clerk, the Personal Record Clerk, and the General Car Foreman, or at prescribed workplaces. Furthermore, the Claimant's activities were a necessary prerequisite to productive work. In addition, their activities involved exertion of a physical nature controlled by the Carrier and pursued primarily for its benefit. The fact that said activities were also in the Claimant's own interest is immaterial. Accordingly, we are of the opinion that the time spent by the Claimants during the processing procedures under consideration clearly falls within the above stated definition and thus constitutes time worked which must be accorded appropriate compensation under the Second Sentence of Rule 1.

3. The record discloses that the Local Chairman notified the Claimants to report for work at 8:00 A.M. which was the starting time of their regular shift in accordance with Rule 2 of the labor agreement. The Carrier argues that it did not authorize the Local Chairman to notify the Claimants to report at any particular time and that they could have reported at any time convenient to them on the day in question. We think this argument is without merit. In the absence of a specific instruction to the contrary the Local Chairman could rightfully assume that the Claimants were supposed to report for work at the start of their regular shift. Thus, no valid objection can be raised to his action or the fact that the Claimants reported at 8:00 A.M.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1963.