

Award No. 4382

Docket No. 4192

2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams 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 P. Frediani and A. Pioscos for time waiting to return to home point on November 30, 1960.
2. That accordingly, the Carrier be ordered to compensate Carmen Philip Frediani and Antonio Pioscos fifteen and one-half (15½) hours each at the time and one-half rate for November 30, 1960.

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

On November 30, 1960, claimants were instructed by their supervisor to proceed by company highway truck to Naismith, Montana to make emergency repairs to car NYC 123547 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 tie up at Shelby, Montana until 7:30 A. M. the following morning and return to Great Falls during the hours of their assignment at home point.

The duty assigned to be performed at Naismith, a point ninety miles from Great Falls, was completed at 3:30 P. M. In conformity with instructions of their foreman, claimants proceeded to Shelby, a point 100 miles from Great Falls, where they tied up at 4 P. M., remaining thereat over night until 7:30 A. M. December 1st, 1960 to begin their return to Great Falls.

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

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, and the failure of the organization to appeal the decisions of the carrier which rejected previous attempts by this organization to change the application of those rules.

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.

Claimants, Carmen Frediani and Picos, were employed by Carrier at Great Falls, Montana and worked the 7:30 A.M. to 4:00 P.M. shift.

On November 30, 1960 they were instructed to take the company highway repair truck, proceed to Naismith, 90 miles away, make emergency repairs to car NYC 123547 and return to Great Falls if they could arrive by 4:00 P.M., otherwise they were to proceed to Shelby, Montana and tie-up on rest until 7:30 A.M., December 1. Claimants finished the repairs at 3:30 P.M.; it was a 3 hour drive back to Great Falls therefore they proceeded to Shelby and tied-up at 4:00 P.M. They claim pay for the 15½ hours which they spent in Shelby and maintain that Rule 22(a) is applicable.

Awards 4269-4275 are very similar in facts and involved the same parties, even to one of the claimants herein. Those awards therefore are to be given weight in this award. We believe that the dissenting members overlooked the fact that claimants there had not completed their work; in fact they were put on rest preparatory to continuing their work of returning the highway repair truck to Great Falls and upon arrival there, to unload it. In keeping with the prior awards, and for the reasons stated we believe that the claims should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4382

The findings of the majority are confusing to say the least.

First it is stated that the claimants had finished their work at Great Falls. Next it is stated that Awards 4269-4275 are very similar in facts but that the claimants there had not completed their work and in keeping with the prior awards the claim should be denied.

It is true that the emergency road work for which the claimants had been called had been finished at 3:30 P.M. November 30 but there was no justifiable reason for having claimants then spend 15½ hours at Shelby, the opposite direction from claimants' home station, when they could have returned to their home station in 3½ hours and reported for work on their regular shift December 1. Claimants should not be penalized for complying with pointless instructions issued by a carrier for the sole purpose of evading payment for traveling time at the overtime rate, as was done in the present instance.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink