Award No. 4495
Docket No. 4056
2-SOU-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the carrier improperly relieved Carman B. L. Thompson for one hour lunch period while performing emergency road work August 5, 9, 23 and September 1, 1960, and Carman J. D. Phillips for one hour lunch period while performing emergency road work August 23, 1960.

2. That accordingly the carrier be ordered to pay the aforesaid employes at straight time rate for the hours each was improperly relieved while away from the shop performing emergency road work.

EMPLOYES' STATEMENT OF FACTS: At Selma, Alabama, the carrier maintains a repair shop and train yard where carmen are employed, including B. L. Thompson and J. D. Phillips, assigned 7:00 A. M. to 4:00 P. M., one hour for lunch, five days per week.

August 5, 9, 23, 1960 and September 1, 1960, Carman B. L. Thompson was sent away from Selma Shop to perform emergency road work, wheeling and/or rerailing cars, and on August 23, 1960, Carman J. D. Phillips was sent from Selma Shop to assist Carman Thompson wheel car at or near Gastonburg, Alabama.

On the above named dates the carrier officer in charge at Selma instructed claimants Thompson and Phillips to eat lunch between noon and 1:00 P. M., one hour for which they would not be paid.

Time claims for the above described waiting time were presented and handled with each Carrier Officer, up to and including the highest designated officer, who has declined or refused to make satisfactory settlement.

The agreement effective March 1, 1926 as subsequently amended is controlling.

by the brotherhood in its submission. That award is of no significance because it is not only erroneous but does not interpret rules identical to those here in evidence. Neither Rules 9 nor 10, nor any others contained in the agreement, support the claim and demand which the brotherhood here attempts to assert.

Rule 9 provides for payment for the length of the lunch period only in situations where employes are required to work during, or any part of, the lunch period. The claimants did **not** work during, or any part of, the lunch period on any day involved in the claim. To the contrary, each claimant took his lunch period while away from Selma the same as he would have taken it had he been at Selma.

Under the last sentence of the second paragraph of Rule 10, the carmen were reimbursed for the cost of their meals.

Rule 10 provides that employes sent out on line of road will be paid from the time ordered to leave home station until return for all time worked in accordance with the practice at the home station. Each claimant has been so paid. Rule 10 also provides for payment at straight time rates for straight time hours and at time and one-half rates for overtime hours worked, waiting or traveling. All straight time hours involved were working or traveling. There were no straight time hours waiting, nor were there any overtime hours working, waiting or traveling.

Claim being without basis and unsupported by the agreement, the Board has no alternative but to make a denial award.

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 B. L. Thompson and J. D. Phillips have been employed as carmen at the Carrier's Selma (Alabama) repair shop. At the time here relevant, their regular working hours consisted of eight (8) hours (with an unpaid lunch hour from 12:00 Noon to 1:00 P.M.) per day, five (5) days per week.

On August 5, 9, and 23, 1960, as well as on September 1, 1960, Thompson was ordered to leave his home station to perform emergency road work. On August 23, 1960, Phillips was also ordered to leave his home station to assist Thompson in said work. Before leaving their home station, the Claimants were instructed to observe their regular working hours while performing the emergency road work in question. They took their lunch hour from 12:00 Noon to 1:00 P.M. on each of said days and received no pay therefore.

They filed the instant grievance in which they contended that the Carrier improperly relieved them without pay during the lunch periods under con-

sideration. They requested compensation at the straight time rate for said periods. The Carrier denied the grievance.

In support of their claim, the Claimants rely on Rule 10 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "An employe regularly assigned to work at a shop * * * when called for emergency road work away from such shop * * *, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station, and also * * * for waiting or traveling.
>
> 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 time will not be paid for * * *."

1. In adjudicating a comparable factual situation which arose under a substantially similar agreement provision, we held in our Award 1784 that the carmen involved in that case were entitled to compensation for the lunch hour taken while engaged in the performance of road work away from home station. The Carrier so strenuously insists that our prior Award is erroneous that we have carefully re-examined it. For the reasons hereinafter stated, we have reached the same result.

2. The First Paragraph of Rule 10 explicitly prescribes that regularly assigned shop employes, who are called for emergency road work away from the shop, shall be paid from the time ordered to leave their home station until they return thereto (i) for all time worked in accordance with the practice prevailing at said station, and (ii) for all waiting and traveling time. The parties are in agreement that the Claimants were paid for all time worked on the days in question in accordance with the practice prevailing at their home station. In addition, there can be no doubt that the time spent by the Claimants during their lunch periods was neither waiting nor traveling time. It was, in law and in fact, relief time because the Claimants were released from work or duty during said periods. The First Paragraph of Rule 10 contains no reference to compensation for relief time. Thus, the Paragraph is inapplicable to the facts underlying the grievance at hand.

3. Compensation for relief time of regularly assigned shop employes while engaged in road work away from home station is regulated in the Second Paragraph of Rule 10. This Paragraph clearly and unambiguously prescribes that if, during the time on the road, such employes are relieved from duty and permitted to go to bed for five (5) or more hours, the relief time will not be paid for. The only logical inference to be drawn from said provision is that relief time will be paid for if, during the time on the road, such employes are relieved from duty and **not** permitted to go to bed for at least five (5) hours. If the parties intended to exclude compensation for relief time on the road in instances other than the one expressly specified in the Second Paragraph, it can fairly be assumed that they would have so stated in the agreement.

Here, the Claimants were released from duty and not permitted to go to bed for the minimum period of five (5) hours while they were engaged in emergency road work away from their home station. Accordingly, they are entitled to the compensation requested by them.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.