Award No. 4752
Docket No. 4685
2-KCS-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Kansas City Southern Railroad Company violated the controlling agreement, particularly Rule 32, when Lineman J. H. Eason was denied travel time from Port Arthur, Texas to Grandview, Missouri per specific language of the rule.

2. That accordingly, the Kansas City Southern Railroad Company compensate Lineman J. H. Eason in the amount of fourteen (14) hours, fifteen (15) minutes travel time at the straight time rate from Port Arthur, Texas to Grandview, Missouri, covering the period of June 18, 1963—12 Noon to 1:00 P.M., 5:00 P.M. to Midnight-and June 19, 1963-12 Midnight to 6:15 A.M., the time of his arrival at Grandview.

EMPLOYES' STATEMENT OF FACTS: Mr. J. H. Eason, hereinafter referred to as the claimant, is employed by the Kansas City Southern Railroad Company, hereinafter referred to as the carrier, in the capacity of lineman at Port Arthur, Texas. The claimant is an hourly rated employe with work week of Monday through Friday, rest days Saturday and Sunday, assigned hours 8:00 A.M. to 12 Noon — 1:00 P.M. to 5:00 P.M.

On June 18, 1963, the claimant was instructed by his supervisor to travel from his home point of Port Arthur, Texas to Grandview, Missouri, a distance of approximately 767 miles, to perform work at that point. Because of the distance involved, it was necessary for the claimant to secure sleeping accommodations and the past practice of this carrier for many years has been that an employe will secure the most inexpensive sleeping accommodations, therefore, the claimant requested pullman space (roomett) on Train No. 16, but was informed none was available and he was given a signed statement by the conductor to this effect, reading:

travel time allowance more attractive or beneficial than their rest, and would rather sleep in a coach, under pay, than sleep in a pullman (paid for by carrier), without pay for travel time, but the rule gives them no such option.

Some instances are:

1/16/56—M. L. Hatley claimed 13 hours travel time.
Pullman was available and claim disallowed.

5/20/59—J. H. Eason claimed 15 hours travel time.
Pullman was available and claim disallowed.

6/16/61—Theron Wilkinson claimed 17 hours service.
Pullman was available and payment was allowed for 4 hours and 40 minutes only.

6/16/61—O. J. Buche claimed 8 hours. Pullman was used and claim was disallowed.

4/1/62—E. T. Blevins claimed 13½ hours travel time. Pullman space was available and claim was disallowed.

4/22/62—O. J. Buche claimed 8 hours and 45 minutes travel time. Pullman was used and claim was disallowed.

4/29/62—O. J. Buche claimed a call, and because pullman accommodations were used the claim was disallowed.

7/22/62—E. T. Blevins claimed 9 hours travel time. Pullman was available and claim was disallowed.

10/7/62—A. N. Lambert claimed a call, and since pullman was used the claim was disallowed.

The claim originally submitted covered the entire period involved in the trip and carrier allowed such portion as encompassed claimant's regular working hours. The claim now before this board is for the balance of the trip, including the one hour lunch period, not a part of the regular working hours.

Carrier denies that it has, prior to this claim, instructed its employees to use only roomette accommodations, and its records do not reflect that a lineman has been denied the right to occupy a bedroom if no roomettes are available.

In carrier's previous instructions and denial letters, the language used has been that "pullman accommodations" or "sleeping car accommodations" should be secured, and the restriction of using roomettes only, has not been in effect.

The arguments of the organization are unrealistic, inasmuch as carrier assumes the expense of the sleeping car accommodations; and this board is not authorized to change the clear wording of Rule 32, as the organization requests, and the claim 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 waived right of appearance at hearing thereon.

Rule 32 provides for pay as claimed "except when five (5) or more continuous hours of the sleeping car accommodations are available and used". The dispute here is whether the claimant was advised that space was available. The employes say he was not made aware of it. The carrier asserts that he should have inquired of the Pullman porter and that his question to the conductor regarding availability of a roomette was designed to get pay instead of available space.

Certainly the carrier has some responsibility to see that the employe is advised of space available under this rule. Absent any evidence of specific instruction to this employe or general instructions to employes respecting who to contact, or what is required of them to ascertain what space is available, and absent any evidence of instructions to conductors or porters in handling such inquiries, we find that the carrier has not fulfilled its responsibility and, under the circumstances shown, the claim should be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1965.

DISSENT OF CARRIER MEMBERS TO AWARD 4752

There is not even the remote possibility that the question of whether the Carrier fulfilled a responsibility to see that an employe was advised of available sleeping car accommodations was a matter of dispute during the handling of this claim on the property. Yet this is the basis upon which the majority rests its opinion.

Both parties have included copies of their correspondence relating to the handling of this claim on the property in their submissions and these show that from the initial filing of this claim forward, the claim was premised on the contention of the Employes that, "the past practice for many years has been to reserve the most inexpensive sleeping accommodation" and "the Claimant requested pullman space (roomette) on Train No. 16." (Carrier's Exhibit 4, page 1, General Chairman's letter of appeal to Carrier's Assistant to President.) Accordingly, the dispute centered around the question whether the Employes were restricted to using

a roomette while they traveled pursuant to Rule 32 of the collective bargaining agreement. As a matter of fact, the Employes cited Carrier's Circular No. 2609 in support of their contention that the past practice required employes to use only a roomette when they were traveling pursuant to Rule 32. This bears out the fact that the Employes never contended during the handling of this claim on the property nor in their submissions to the Second Division that the Carrier neglected a responsibility in this regard because there would have been no need for the Carrier to instruct its employes to use only roomette sleeping car accommodations, when available, if it had the initial responsibility to advise the employe of any and all sleeping car accommodations available beyond what the employe requested. The context of the Circular leaves no doubt that the instructions contained therein were addressed to the employes who would be using the sleeping car accommodations.

It is rare, indeed, to witness the majority, as presently constituted deciding an issue that was never a part of the dispute which was submitted for arbitration. But. nonetheless, that does not relieve us of our responsibility to call attention to this irregularity because of the two fundamental results which flow from this action. First, one of the rudimentary principles of arbitration requires that the arbitrator has authority to decide only those issues which were in dispute between the parties and certified to him for resolution. Hence when the award of the arbitrator goes beyond his authority, it is impeachable. Second, we recognize that the Employes could have premised their claim on the theory that the Carrier had neglected to fulfill a responsibility (assuming one exists) to advise the traveling employe of all space available even though the employe only requested one class of sleeping car accommodation. If this had been the case, each party would have had the opportunity, and the responsibility under Section 2 of the Railway Labor Act and Circular No. 1 of this Division, to adduce whatever evidence it had available to support his position. But in this case, the Respondent Carrier will be deprived of its property if it honors this award without having had the opportunity to be heard and produce its evidence on this question, a clear disregard of the requirements of due process.

Either of these reasons standing above is sufficient to render this Award a nullity.

F. P. Butler
H. F. M. Braidwood
H. K. Hagerman
P. R. Humphreys
W. B. Jones

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