Award No. 6025
Docket No. 5794
2-DM&IR-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 71, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That in violation of the current agreement, the carrier declined to compensate carmen L. W. Runke, L. J. Greene and L. F. Julin for travel time of one and one-half (1½) hours for each of the following days:

L. W. Ruhnke—February 26, 1968
L. J. Green—March 4, 5 and 6, 1968
L. F. Julin—March 7, 8, 11, 12, 13, 14 and 15, 1968

2. That accordingly, the carrier be ordered to additionally compensate each of the aforementioned carmen at the applicable hourly rate for travel time on the date as shown above.

EMPLOYES' STATEMENT OF FACTS: Carmen L. W. Ruhnke, L. J. Green and L. F. Julin, hereinafter referred to as the claimants are employed by the Duluth, Missabe and Iron Range Railway Company, hereinafter referred to as the carrier. The claimants are regularly assigned employes on carrier's Missabe Division and their headquarters point is located at Proctor, Minnesota.

A vacation vacancy occurred at Missabe Junction in February 1968 and was filled by claimant, L. W. Ruhnke, on February 26, 1968. The following month another vacation vacancy occurred at Steelton which was filled by claimants L. J. Greene and L. F. Julin. Claimant Greene worked at Steelton on March 4, 5 and 6, 1968; and claimant Julian worked at Steelton on March 7, 8, 11, 12, 13, 14 and 15, 1968.

The carrier required the claimants to travel from their headquarters point to the point of their relief assignment outside of their regularly assigned hours but refused to compensate them for the travel time involved. However, the carrier did grant the claimants automobile mileage allowance for the

During the progression of this case on the property, the Employes have submitted statements signed by various carmen and various firemen and oiler employes. Two of the firemen and oiler employes who signed statements are Mr. Richard Kusch as claimant and Mr. Carl Schaumberg, local chairman. The latter progressed the claim on this property as local chairman, for travel pay for August 22, 23, 24, 25, 26, 29, 30, 31 and September 1 and 2, 1966. This claim was denied on final appeal on March 15, 1967 on the basis that claimant Kusch bid for and was assigned to a regular vacation relief position, that the provisions of Rule 4, Allowances for Regular Vacation Relief Service, were applicable, and that Rule 12 (e) applies only when an employe is filling a vacation relief assignment other than regular. The carrier further stated on March 15, 1967 that Rules 4 and 12 have been applied in the manner stated since the making of the current agreement effective October 1, 1959. The Firemen and Oiler organization accepted the Carrier's decision and did not process the claim further.

In view of the foregoing, it is difficult to comprehend the contention of the employes that they have received travel pay as a regularly assigned vacation relief employe. It is quite possible that the employes who have afforded the organization statements in this case, were employes other than regular vacation relief employes. Under such circumstances, Rule 12 (e) would be applicable and such employes would be allowed that which is provided therein.

In conclusion, the claims of the employes are without merit for the following reasons:

1. Rule 4 specifically provides for allowances to be granted for regular vacation relief service.

2. Rule 4 (b) is explicit in that it clearly stipulates that the time **in excess** of one and one-half hours will be paid at the straight time rate. Travel time actually involves only 20 minutes and no time was spent waiting enroute or waiting for the shift to start.

3. The claimants bid for and were assigned to vacation relief positions; therefore, there can be no question that they were regularly assigned vacation relief employes.

4. Rule 12 is not applicable in the instant dispute as it applies only to employes used on temporary work away from their headquarters and does not apply to regular vacation relief employes.

5. Carrier's records do not indicate that regularly assigned vacation relief employes have received travel time under the circumstances involved herein. Contrariwise the Carrier has shown in Exhibit A that a similar claim involving the application of the rules in question was denied in 1967, which is consistent with the Carrier's position in this case. The fact that the Carrier's decision was accepted is a clear indication that the rules were properly applied.

In view of all the facts and circumstances shown by the carrier, the carrier respectfully requests that your Honorable Board deny the claim of the employes.

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.

Travel allowances for employes regularly assigned to vacation relief service who are required to travel as part of their assignment (that being precisely the category in which claimants belong) are covered in Rule 4. Paragraph (b) thereof specifies that time in excess of one hour and thirty minutes consumed in actual travel, including waiting time enroute and waiting for shift to start, shall be compensated at the straight time rate of the job to which traveled.

The facts show that on the dates involved the time required by claimants to travel from their headquarters point to the outlying point at which they were to furnish vacation relief, was approximately twenty minutes. Since the time consumed in travel and waiting did not exceed one hour and thirty minutes, a cause of action is not present for payment of travel time under Rule 4.

The circumstances that Carrier has paid travel time pursuant to Rule 12 in instances where employes not regularly assigned to vacation relief temporarily fill a vacation vacancy, is not a relevant consideration in adjudicating the instant claim. Furthermore, it should be noted that a conflicting past practice, no matter how long endured, does not serve to alter or nullify clear and unambiguous contract language.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, 21st day of October 1970.

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