Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8303
Docket No. 8043
2-C&NW-CM-'80

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

Parties to Dispute: System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)

Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Carmen W. T. Mooney, R. E. Kuhn, and D. L. Matysik, Altoona, Wisconsin, were denied compensation for the period of 12:00 Noon to 12:30 P.M. while they were away from home station on emergency road work; the amount of one-half hours pay at straight-time rate for the following days:

Carman W. T. Mooney:	12/6/77
	12/30/77
	1/6/78
	1/10/78
Carman R. E. Kuhn:	12/6/77
	12/19/77
	12/20/77
	12/30/77
	1/6/78
Carman D. L. Matysik:	12/5/77
	12/19/77
	12/20/77
	12/29/77
	12/30/77
	1/5/78
	1/6/78
	1/10/78

2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen W. T. Mooney, R. E. Kuhn, and D. L. Matysik for one-half hours pay at the straight-time rate for the above identified dates, and that the Transportation Company in the future discontinue its practice of depriving carmen of compensation for meal periods while away from home point on emergency road work.

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.

This claim arose when carrier assigned three employees, Carmen Mooney, Kuhn, and Matysik, to road work assignments away from their home station at Altoona, Wisconsin, Repair Track. Carrier denied the claimants pay for the 30-minute lunch period taken while on assignment. The organization asserts that while the men are performing emergency road work, their lunch period is waiting time and consequently covered by Rule 10 of the controlling agreement. As such, the claimants should be paid at straight time for the 30-minute lunch period for all the dates specified in the claim.

The carrier denied the claim on the basis that the claimants were not required to perform work during the 12:00 to 12:30 p.m. lunch period. It also points to the arguments it used in a similar case (Award No. 7859) as applicable and on point here.

The record of this case, the decisions submitted by each side in support of its respective position, and the arguments presented by counsel at the oral hearing before this Board make it clear that a number of questions must be addressed and decided before this dispute can be resolved. Critical to this dispute is (1) the nature of the claimants' bulletin assignment, (2) the rules of the controlling agreement that apply to the claimants, (3) past practice on carrier's divisions, (4) the impact of previous Board decisions presented by the parties in support of their respective positions, (5) the question of whether carrier's denial of the claim on the property meets the requirements of Article V of the agreement, and (6) a decision concerning what portion of the carrier's submission, if any, should be rejected by this Board as not having been advanced and discussed in an attempted resolution of this dispute on the property.

This Board is mindful of the importance of this dispute to the organization and to the carrier. This issue has arisen in a number of different ways on this property in the past. Unless satisfactorily resolved, it will undoubtedly be before us again. But all the question that must be answered before this dispute can be settled cannot be answered from the record developed on the property.

At this late date, both the carrier and the employee organization are fully aware that issues and arguments not presented on the property will not be considered de novo by this Board. The basic case of both sides must be made on the property, not in the ex parte submissions on appeal to this Board. For this Board to waiver from this well-emunciated policy would be to encourage the parties to give only lip service to dispute resolution during the lower levels of the grievance procedure. This is contrary to the purpose of the Railway Labor Act and in direct contradiction to a long line of decisions by this Board in every division.

A careful review of the record before us reveals that carrier made two basic arguments on the property to support its denial of this claim. First, the claimants were not required to perform service during the lunch period and second, arguments presented in support of carrier's position in Award No. 7859 are applicable in the instant case.

Carrier is obviously referring to the argument it made in that case that Rule 10 should be interpreted to mean that "An employee will be paid from time ordered to leave home station until his return for all time worked in accordance with practice at home station." This Board has considered that position in rendering a decision in Docket No. 7679 (Award 7859) and did not find it persuasive. This Board must also look to the language of Rule 10, which states that employees will be paid straight time rates for traveling or waiting. Award 1784, supported by Award 4495 and now by Award 7859, clearly determined that the lunch period was waiting time and therefore payable at straight time. These cases serve to support the organization's position in this case.

The argument that the claimants were not required to work during the lunch period was not the central issue in Award No. 7859, nor is it the critical issue in the instant case. Award 1784 established that when employees are assigned to emergency road work, the lunch period is considered to be waiting time. As such, it is payable at straight time in accordance with Rule 10. That was the issue in Award No. 7859 and that is the issue in the instant case.

Awards 3831, 4181, and 5840 did not serve to reverse this board's decision in Award 1784, as carrier argues. These awards address themselves to the five-hour rest period between hours of duty. They are not on point here.

In its ex parte submission, carrier presented numerous arguments that were not advanced on the property. This Board has not considered those arguments in arriving at a decision in this case. This is not to say, however, that if these arguments had been presented on the property that this Board would not have, after due consideration decided the instant case differently.

At the oral hearing of this case, carrier's representative argued that Second Division Award 8186 was dispositive of the instant dispute and should prevail. This Board does not agree. Award 8186 is clearly distinguishable from the case now before us. In the record of that case, the parties argued the question of what work performed by carmen, under what conditions, constituted emergency road work, as covered under Rule 10. In the instant case, the substance of the work performed by the claimants was not discussed, nor was it argued that it was not emergency road work. At no time in this case did the carrier take the position that it took regarding the nature of the work performed in Second Division Award No. 8186.

Only the facts and arguments presented by the carrier on the property may be considered by this Board. Carrier had argued that there were no rule violations and that it had denied the claim because of the position it had taken in Award No. 7859. That position was not sufficient to support a denial of the claim in Award 7859. Given the marked similarity of that case with the instant one, we must find that it is also insufficient to support a denial of the claim here.

A W A R D

Claim sustained. The claimants shall be paid at straight time rates for lunch period on days specified in the claim.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of April, 1980.