

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute:

{ Brotherhood Railway Carmen of the United States
and Canada
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carmen Richard Wilmot and Gene Miller, Sioux City, Iowa, were denied compensation for the period of 12:00 Noon to 12:30 P.M. on March 15, 1979, while they were away from home station on emergency road work, in the amount of one-half hours pay each at the straight-time rate.
2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen Richard Wilmot and Gene Miller for one-half hours pay at the straight-time rate for March 15, 1979, and that in the future the Transportation Company correct its violation of the provisions of Rule 10 of the Joint Agreement and compensate its employees 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 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 waived right of appearance at hearing thereon.

The relevant facts in this case are not in dispute. On March 15, 1979, Claimants R. Wilmot and G. Miller were ordered to repair train lines on cars CNW 263811 and 500 19043 at Sheldon, Iowa. Normally, Claimants are assigned as Truck Driver and Car Inspector, respectively, at Carrier's Sioux City, Iowa facility.

While away from their home assignment, Claimants were paid in accordance with normal Carrier practice. However, they were not paid for their meal periods - Noon to 12:30 p.m. on that day.

The Organization contends that Claimants performed emergency road work on March 15, 1979. As a result, Claimants were entitled to be paid for the lunch break, in accordance with Rule 10 of the current Agreement between the parties.

In addition, the Organization argues that Carrier's denial on the property was improper since it gave no reasons for that denial. Rather, Carrier simply

asserted that it was denying the claim based on the findings in Award No. 8186. In the Organization's view, the failure to list specific reasons for denying the claim constitutes a further violation of the Agreement.

Carrier, on the other hand, asserts that the claim is without procedural or substantive merit. It notes that it is free to deny a claim for the most general of reasons. Thus, the basis of its denial is in accord with Article V, Section 1 (a) of the Agreement.

As to the merits of the claim, Carrier asserts that the work involved was not of an emergency nature. Thus, Carrier's failure to pay Claimants for the lunch period was in accordance with Rule 10.

Rule 10 reads, in relevant part:

"An employe regularly assigned to work at a shop, engine-house, repair track or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection point, will be paid from the time ordered to leave home station in accordance with practice at home station and will be paid straight-time rate for travelling or waiting, except rest days and holidays, which will be paid for at the rate of time and one-half.

If, during the time on the road a man is relieved from duty and permitted to go to bed for five or more hours, such relief time will not be paid, provided that in no case shall he be paid for a total of less than eight hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by the railway company, actual necessary expenses will be allowed."

Both parties cite numerous awards of this Board to support their contentions. Of particular applicability are Awards No. 8186 (relied upon by Carrier) and 8303, 7859 and 1784 (relied upon by the Organization). Central to all these awards is the concept that if the work in question is emergency work, Carrier is obligated to compensate those performing it for their lunch period.

Thus, simply stated, the question to be decided in this case is whether the Organization can establish that the work performed by Claimants on March 15, 1979 was "emergency" work. We conclude that the Organization met its burden here.

In making our determination, we are mindful of Referee Fitzgerald's conclusion in Award No. 8186. However, unlike the facts there, the record evidence is to conclude that a true emergency existed within the meaning of Rule 10.

Of course, our finding does not mean that all assignments away from home station are emergency assignments. We determine only that the assignment of Claimants on March 15, 1979 constituted emergency work.

In light of our findings, it is unnecessary to decide the procedural violation asserted by the Organization. We will pay the claim as presented for the two Claimants. All other requests for remedy are denied.

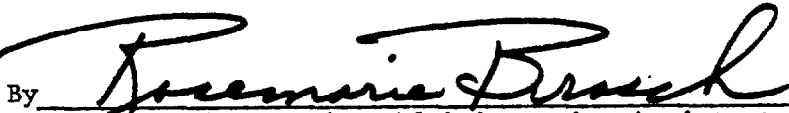
A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January, 1983.