

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Chicago & North Western Transportation Company

Dispute: Claim of Employees:

1. Carmen B. E. Sislo and L. R. Smith, Itasca, Wisconsin, were denied compensation for the period of 12:00 Noon to 12:30 P.M. on November 25, 1981, while they were away from home station on emergency road work, in the amount of one-half hour's pay each at the straight-time rate.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen B. E. Sislo and L. R. Smith for one-half hour's pay at the straight-time rate for November 25, 1981, 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 employe or employees involved in this dispute are respectively carrier and employees 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 Claimants, B. E. Sislo and L. R. Smith, are employed as car repairmen by the Carrier, Chicago and North Western Transportation Company; the Claimants are assigned to the Carrier's Itasca, Wisconsin, Mechanical Department.

The Organization filed this claim on behalf of the Claimants, alleging that they were entitled to an additional one-half hour's pay at the straight-time rate for their lunch period while the Claimants were away from their home station on November 25, 1981, on a road work assignment.

The Organization contends that the Claimants' repair and inspection assignments on November 25, 1981, constitute emergency road work. The cars required immediate attention and could not be attached to a train until repaired. The Organization maintains that under Rule 10 of the controlling agreement, the Claimants should have been paid for their lunch period. Rule 10 provides in part:

"An employe regularly assigned to work at a shop, enginehouse, 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 for all time worked in accordance with practice at home station and will be paid straight-time rate for traveling or waiting, except rest days and holidays, which will be paid for at the rate of time and one-half."

The Organization also maintains that the Carrier historically has compensated its employees for lunch periods while they are away from home stations doing emergency road work.

Finally, the Organization contends that the claim should be sustained, and each Claimant should receive one-half hour's pay at the straight-time rate.

The Carrier contends that Rule 10 provides for such a payment only when Carmen are in emergency service. The Carrier denies that the Claimants were in emergency service on November 25, 1981, and maintains that the Organization has offered no support for its assertion that an emergency existed.

The Carrier points out that the Organization is seeking a remedy for possible future occurrences of this incident. The Carrier argues that this amounts to injunctive relief and is beyond the scope of the Board's jurisdiction.

Finally, the Carrier contends that the claim should be denied.

This Board has reviewed all of the facts and evidence in this case, and it finds that the Organization has presented substantial evidence that the work performed by the two Claimants on November 25, 1981, was emergency road work. Consequently, pursuant to the applicable rules and past practices between the parties, those Claimants were entitled to be paid for their one-half hour lunch period.

The record demonstrates that the Claimants were regularly assigned to the Carrier's Itasca, Wisconsin, Mechanical Department. On the date in question, the Claimants were assigned to attend to emergency road work, away from their home station, in Spooner, Wisconsin, which consisted of repairing a train line, adjusting a shifted load, as well as inspecting brakes. Defective parts had to be made operable before the cars could be connected to the train.

Although the Carrier argues that the Organization did not submit any evidence that the Claimants had performed emergency work, the record reveals that on December 18, 1982, the Organization's General Chairman sent a letter to the Carrier's Manager of Labor Relations, stating:

"Claimants were sent from their home station at Itasca to Spooner, Wisconsin, to adjust load on a freight car CNW 118019 and repair train line on freight car CNW 100643 and test air brakes on November 25, 1981. The Claimants performed this work so that the cars could be attached to a train, or continue enroute; an assignment, which certainly constitutes emergency road work. The cars in question required immediate attention if the Carrier was to fulfill its obligation to its customer."

The record does not disclose any response by the Carrier to the claim of emergency work by the Organization.

Under previous decisions of this Board, when the Claimants perform emergency road work, they are entitled to be paid for their mealtime. (See Awards 1784, and 9332.)

We find, in the case at hand, that the Organization has presented sufficient evidence that an emergency situation existed; and therefore, the Carrier was obligated to compensate the Claimants for their lunch period.

The Carrier argues, and we agree, that just because an employee is called to road work does not entitle him to payment for lunch period. (See Award 8186.) The work to which an employee must be called in order to qualify for payment for mealtime must be emergency work, and the Organization must show, with substantial evidence, that the work was, as the Third Division stated in Award 4354, "a sudden occasion; pressing necessity; strait; crisis. It implies a critical situation requiring immediate relief by whatever means at hand."

In other words, every road assignment is not an emergency. However, in this case, the Organization has presented sufficient evidence to show that an emergency did exist and that the Claimants were entitled to payment for their mealtime.

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AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of September 1985.