

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—
WESTERN LINES

DISPUTE.—“That Signal Maintainer L. E. Daffer be paid one-half time under Section 14 of Article II of Rules for Signal Employees, effective February 1, 1929, from 4:00 p. m., the end of his assigned hours, until the time he arrived at Plainview or Canyon on May 22, 23, 31, June 1, 5, and 6, 1934.”

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employee 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.

The parties to said dispute were given due notice of hearing thereon.

The case being deadlocked, Paul Samuell was called in to sit with this Division as Referee.

The parties have jointly certified the following statement of facts, and the Third Division so finds:

“During May 1934 the Signal Supervisor instructed Signal Maintainer L. E. Daffer, whose headquarters were at Lubbock, Texas, to take care of some rebonding of circuits at Canyon, Texas (off his regular assigned territory). On May 22nd Mr. Daffer traveled from Plainview, Texas, to Canyon, Texas, on train 96, and returned from Canyon to Plainview May 23rd on train 95. On May 31st he traveled from Plainview to Canyon on train 96, and returned to Plainview on train 95, June 1st. On June 5th he traveled from Plainview to Canyon on train 96 and returned to Plainview on train 95 June 6th. Train 96 was scheduled to depart Plainview 4:53 p. m., arrive Canyon 6:25 p. m. Train 95 was scheduled to leave Canyon 7:45 p. m. and arrive Plainview 9:00 p. m. Mr. Daffer submitted the following time claim:

	Hours
May 22, 1934, 4:00 p. m. to 6:00 p. m.-----	1
May 23, 1934, 4:00 p. m. to 9:00 p. m.-----	2½
May 31, 1934, 4:00 p. m. to 6:00 p. m.-----	1
June 1, 1934, 4:00 p. m. to 9:00 p. m.-----	2½
June 5, 1934, 4:00 p. m. to 6:00 p. m.-----	1
June 6, 1934, 4:00 p. m. to 9:00 p. m.-----	2½
Total -----	10½

which was declined by the Carrier. Mr. Daffer also claimed expenses for meals and lodging while at Canyon and Plainview on the dates specified above, which the Carrier allowed.

“Mr. Daffer's regular assigned hours were from 7:00 a. m. to 4:00 p. m., with one hour off for meal period.”

An agreement, bearing effective date February 1, 1929, is shown to exist between the parties, from which Agreement both parties cite Sections 14 and 16, upon which they respectively rely as follows, to wit:

“SECTION 14. Hourly rated employees sent from home station to perform work and who do not return to home station the same day will be allowed time for traveling or waiting in accordance with Section 16 of this article. All hours worked will be paid for, straight time for straight time hours

and at the overtime rate for overtime hours. Actual living expenses will be allowed at the point to which sent if meals and lodging are not provided by the Company or camp cars to which employees are assigned, are not available."

"SECTION 16. Hourly rated employees who do not return to home station the same day, when not in camp cars, and traveling on trains by direction of the Management, will be allowed actual time for traveling or waiting during the regular working hours, and half time for such hours other than those regularly assigned when sleeping accommodations are not available.

"Actual living expenses, but no time, will be allowed for traveling or waiting between the end of the regular hours of one day and the beginning of the regular hours of the following day when sleeping accommodations are available."

Section 16 clearly defines those cases or instances where sleeping accommodations "are not available", and those that "are available." It is contended by the employee's representatives that the first paragraph applies and that "sleeping accommodations" should be construed to mean "sleeping-car accommodations", and inasmuch as sleeping-car accommodations were not available that the employee's claim should be sustained.

With this contention we cannot agree. This Board has no authority to modify the clear and plain language of the Schedule or contract between the parties, and there appears to be no reasonable reason why we should interpret "sleeping accommodations" to mean "sleeping-car accommodations." There is no evidence in the record showing a mutual mistake between the parties at the time the Schedule or contract was drafted, nor has the conduct of the parties over a long period of time altered or modified the Agreement. In fact, the second paragraph of Section 16 appears to destroy the contention of employee's representatives since it specifically provides that "no time" will be allowed for traveling or waiting between the end of the regular hours of one day and the beginning of the regular hours of the following day "when sleeping accommodations are available."

AWARD

The claim is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 13th day of August 1935.