NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim of J. C. Brening, section laborer at Brainerd, for continuous time from 5:04 a. m. to 11:18 p. m., February 21, 1936, based on Rule 63 (revised) of Maintenance of Way Schedule which was effective March 1, 1922."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"Mr. Brening was a member of section crew at Brainerd, Minnesota. An extra west struck the section motor car operated by this section crew, the car standing on the main line when it was struck. An investigation of this accident was held at Duluth, Minnesota, the division headquarters, on February 21, 1936. The section crew was found not to blame for the accident.

"Brainerd is 118 miles from Duluth.

"The train service was such that the members of the section crew left Brainerd at 5:04 a. m., arrived at Duluth at 8:40 a. m. Returning, they left Duluth at 7:30 p. m. and arrived at Brainerd at 11:18 p. m. They were allowed eight hours' pay and expenses incurred. Mr Brening *claims that he should have been paid continuous time from 5:04 a. m.* until 11:18 p. m. in lieu of eight hours."

The agreement between the parties bearing effective date of March 1, 1922, was placed in evidence.

POSITION OF EMPLOYES.—The contentions of the employes were stated as follows:

"As indicated in Joint Statement of Facts, J. C. Brening was employed as a section laborer at Brainerd, Minn. He was directed by an authoritative officer of the Railroad to be in Duluth on Feb. 21st, 1936. In order to comply with that instruction it was necessary that Brening leave Brainerd on a train leaving 5.04 a. m. on February 21, returning to Brainerd, his headquarters, on a train arriving at 11:18 p. m. the same day. For this service Brening was allowed eight hours' pay, same as if he had been employed during his regular assigned hours at his headquarters. He holds, and we agree with him that in conformity with *Rule 63 of agreement then in effect, he should be paid for all the time* devoted in riding and waiting for trains in connection with this service.

"Schedule Rule 63 in Agreement in effect February 21, which is identical with rule 52 in current agreement, reads:

'Employes, except pumpers, bridge or building inspectors, water service foremen, assistant water service foremen, sent away from their outfits or headquarters to do work, will be allowed straight time for traveling or waiting for trains. Where lodging is furnished, this rule does not apply to the period waiting for trains. Employes will not be allowed time while traveling in the exercise of seniority, or between their homes and designated assembling points, or for other personal reasons.'

OPINION OF THE BOARD.—That the term "to do work," as contained in rule 63 (revised) of the agreement effective March 1, 1922, between the Northern Pacific Railway Company and employes in the Maintenance of Way Department, contemplates "work" to mean the usual or accustomed vocation of the employe, or, in other words, work at the type of work to which an employe is regularly assigned. Attending an investigation at the request of or under instructions from the railway company is comparable in the present instance to "attending court under instructions from the railway company," as outlined in rule 66 of the same agreement between the employes and the carrier, and is properly applicable to this dispute.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein, and

That the claimant sustained no loss by reason of the investigation of the railway company and was properly compensated under rule 66 by the allowance of his usual eight hours' pay and his expenses incurred during the trip, and that the agreement between the parties has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois this 15th day of April, 1937.