

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Signal Maintainer J. R. Hillam for pay at pro rata rate, as provided for in Rule 20 of current agreement, for time traveling 5:00 to 9:00 P. M., after the end of regular working hours until arrival at Portola, California, from Marysville, California, on February 27, 1939, and for time traveling March 2, 6:00 to 8:00 A. M., prior to the beginning of the regular working hours on return trip from Portola to Marysville, and on all subsequent days when like conditions prevailed."

EMPLOYES' STATEMENT OF FACTS: "Mr. Hillam holds a regularly assigned position of signal maintainer on the Western Pacific Railroad and is paid on an hourly basis (83¢ per hour). His regular assigned hours are from 8:00 A. M. to 12:00 Noon and from 1:00 P. M. to 5:00 P. M. every day in the week except Sundays and holidays.

"His section is divided, a part of which is on the Western Division and a part is on the Eastern Division. The Western Division section includes an automatic interlocker and grade crossing signals at Marysville, Calif. It also includes the grade crossing signals and station signals between Pleasant Grove and Oroville, a distance of 49 miles. The Eastern Division portion of his section includes automatic block signals at Chilcoot Tunnel, Highway grade crossing signals, station signals and highway crossing gates between Doyle, Calif., and Portola, Calif., and between Reno Junction and Reno, Nevada (a total distance of 95 miles). The distance between Oroville and Portola is 116 miles and the signal apparatus on this portion of the railroad is taken care of by the signal maintainer located at Keddie, Calif.

"Hillam's home station is Marysville, Calif., which is about midway between Pleasant Grove and Oroville. Maintenance of apparatus on the Eastern Division was assigned to section now held by Mr. Hillam sometime about 1926.

"Prior to this time the signal apparatus on the Eastern Division was maintained by the signal maintainer at Stockton, Calif., who traveled to Portola on a train leaving Stockton late at night and was able to secure Pullman accommodations which he occupied to Portola. About the time that the maintenance of the signal apparatus on the Eastern Division was transferred from the Stockton section to the Marysville section, changes in passenger train schedules made it necessary for maintainer to leave Marysville in the afternoon, arriving in Portola early in the evening, about 9:00 P. M., where hotel accommodations were available. Following the changes in passenger train schedules arrangements were made, in conformity with the current agreement, to pay the maintainer at the pro rata rate for all time traveling between the end of his regularly assigned hours of work and

"As stated by Employees, for a number of years claims were allowed on the basis of the claim here presented, but this was done without the knowledge of Carrier's General Manager. The first indication of such method of payment reached General Manager's office in February, 1939, and instructions were immediately issued to discontinue allowance of such claims. The fact that Carrier's timekeeper allowed similar claims for approximately twelve years should *not* supersede the plain wording of the intent of the schedule rule. Rule 20 definitely and specifically provides that no time will be allowed for traveling 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.

"In asking that the claim of Employees be declined, Carrier directs attention to that part of Rule 20 reading: 'Actual 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,' contending further that Award No. 73 sustains its position and that Award No. 279 is not applicable because it deals with pay for traveling during a period which is not comparable to the period involved in this dispute."

There is in existence an agreement between the parties bearing effective date of June 16, 1923.

OPINION OF BOARD: The evidence of record shows that from June 16, 1923, the effective date of the operative Agreement, until February 27, 1939, the first date to which this claim applies, traveling time was paid for by the carrier, under Rule 20 of the Agreement, in conformity with the present contentions of the claimant; and that from sometime in 1926 until February 27, 1939, for a period of some twelve or thirteen years, Signal Maintainer Hillam, on whose behalf this claim is submitted, was thus paid under the identical circumstances here involved. The carrier now seeks to withhold payment for the specified dates and thereafter because sleeping accommodations were available. The sleeping accommodations referred to in Rule 20 which are involved in this case obviously apply to the time of travel. The time of travel involved in this dispute extended from 5:00 P. M. to 9:00 P. M. on February 27, 1939, and from 6:00 A. M. to 8:00 A. M. on March 2, 1939, and for the same periods on subsequent dates. Sleeping accommodations were available during these periods of travel in the sense that the employee traveled on trains which included sleeping cars. If the mere availability of such sleeping accommodations, regardless of the time of travel, were to constitute the controlling factor, the differentiation established by the rule would appear to be a wholly arbitrary differentiation, without regard to the actual facts or circumstances of the situations sought to be covered. The claimant in this case had a full night available for sleep, after arrival and before his subsequent departure, and his accommodations at the point to which sent were paid for by the carrier under Rule 18. Rule 20 is entirely restricted to payments for traveling (or waiting) time, and the fact that the traveling was done on trains which included sleeping cars, at a time when the existence of sleeping accommodations was wholly immaterial, cannot operate to deprive the employee of the time allowances provided for in that rule. Accordingly, the carrier has failed to adduce adequate grounds for changing the interpretation of the rule which has long prevailed under the precise circumstances of this proceeding, and the claim as submitted must be held to be a valid one.

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 Employee involved in this dispute are respectively Carrier and Employee 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 evidence of record discloses a violation of Rule 20 of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.

DISSENT TO AWARD NO. 1109, DOCKET NO. SG-1112

We perforce dissent from that part of the Opinion which, in addition to supporting continuation of the practice here involved, imputes to the term "sleeping accommodations" the narrow application "to the time of travel." Thus by indirection sleeping accommodations, as intentionally and clearly used in Rule 20 in its generally accepted and understood meaning in relation to travel time is here circumscribed to imply application solely to such accommodations on cars. Though admittedly the Opinion, taken in entirety, is confined to the precise circumstances of this proceeding, nevertheless, such implication of restriction in Rule 20 to sleeping accommodations on cars is in error.

S/ C. C. COOK
S/ R. H. ALLISON
S/ A. H. JONES
S/ C. P. DUGAN
S/ R. F. RAY