

Award No. 2304

Docket No. MW-2238

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Herbert B. Rudolph, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE DELAWARE AND HUDSON RAILROAD**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(a) That Guy Waterman, Plumber, B & B Gang No. 7, Oneonta, New York, be paid at the rate of time and one-half for work performed during the meal period from 12:00 to 1:00 P. M. on March 21 and March 22, 1940;

(b) That he be paid at the rate of time and one-half for work performed after the completion of his regular assignment; three hours and 30 minutes March 21; two hours March 22; and two hours March 27, 1940.

**EMPLOYEES' STATEMENT OF FACTS:** On March 21 claimant worked two and a half hours at Oneonta, New York, after which, acting on instructions of his superior, he traveled to Mohawk, where he worked continuously through the noon hour and until 5:30 P. M. He then returned to his headquarters at Oneonta, arriving there at 7:30 P. M.

On March 22 claimant again was instructed to go to Mohawk and he worked there continuously through the noon hour and until 4 P. M. He then returned to his headquarters at Oneonta, arriving there at 6 P. M.

On March 27 claimant again was instructed to perform service at Mohawk. He did not work the noon hour. After work was completed at Mohawk he returned to his headquarters at Oneonta, arriving Oneonta at 6 P. M.

In each instance he traveled to and from his headquarters using company track motor car.

An agreement is in effect between the parties bearing effective date of July 1, 1939, which, by reference, is made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** The current agreement between the parties contains the following rules, which the Employees contend support their claim in this case:

**"MEAL PERIOD.**

Rule 17 (b) When a meal period is allowed, it will be between the ending of the fourth hour and the beginning of the seventh hour after starting work. When the meal period is not afforded within the allowed or agreed time limit and is worked, it shall be paid for at the

In connection with claim for 2 hours at overtime rate on March 22, 1940, and March 27, 1940, time between 4:00 P. M. and 6:00 P. M. on both dates was traveling time and paid for at straight time rate.

The question involved in this claim, insofar as traveling time is concerned, is whether traveling time back to headquarters following completion of the regular work period should be paid for at straight time rate or overtime rate. Rule 24 of agreement effective July 1, 1939, is the governing rule, and reads as follows:

**"Rule 24:**

(a) Extra gangs and regular gangs working off their assigned territory, will be paid straight time rates for time consumed traveling to headquarters following the work period.

Hourly rated employees not in outfit cars will be allowed straight time when traveling, **by train or otherwise**, by direction of the Management during the regular work period, **and straight time rate during overtime hours, whether waiting or traveling**, on or off assigned territory.

(b) Hourly rated employees assigned to travel with and watch pile drivers, steam ditchers or other equipment in transit will be allowed straight time for actual time traveled."

It will be noted that this rule states very specifically that hourly rated employees will be allowed straight time rate during overtime hours, whether waiting or traveling by train or otherwise. This is plain language, and does not seem susceptible to any other interpretation, than that straight time rate is the proper rate for traveling time. It is desired to point out that claims for overtime have never been presented for traveling by train. It is further desired to emphasize that the rule states traveling by train or otherwise.

The Carrier contends that employees traveling on a motor car are traveling as contemplated under Rule 24 (a) and are therefore only entitled to straight time rate for such time, regardless of whether it is during the regular tour of duty or following completion of the regular tour of duty.

It is desired to call attention to Rule 24 (b), which provides that hourly rated employees assigned to travel with and watch pile drivers, steam ditchers or other equipment in transit will be allowed straight time for actual time traveled. If the interpretation requested by the organization were placed on Rule 24 (a), employees riding back to headquarters on a motor car during overtime hours, would be paid at time and one half rate, while employees assigned to travel with and watch large pieces of equipment are being paid straight time rate. The interpretation requested by the organization on Rule 24 (a) would be inconsistent with what is provided for in Rule 24 (b).

The Carrier contends the rule concerned in this claim is very plain and is not susceptible to any interpretation such as requested by the organization. It is further contended that the interpretation requested by the organization would be inconsistent with other rules of the agreement. Carrier respectfully requests claim be denied.

**OPINION OF BOARD:** The question presented by this record is whether time spent in returning to claimant's headquarters on a track motor car is "time worked" within the meaning of the overtime rule, Rule 18, which provides:

"Time worked following and continuous with the regular eight hour work period shall be paid for at the rate of time and one-half  
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That the rules contemplating a distinction between "time worked" and "travel time" is clear. Rule 24 provides the rates of pay for "travel time." The second paragraph of Rule 24 (a) is relied upon by the Carrier and is as follows:

"Hourly rated employes not in outfit cars will be allowed straight time when traveling, by train or otherwise, by direction of the Management during the regular work period, and straight time rate during overtime hours, whether waiting or traveling, on or off assigned territory."

The current rules became effective July 1, 1939. The use of the track motor car for travel was in vogue long before the effective date of these rules, and such mode of travel must be held to have been within the contemplation of the parties when they provided for rates of pay when traveling by "train or otherwise." However, claimant contends that because a rider, as distinguished from the operator, on a track motor is required by company rules to take certain precautions for his own safety and the safety of the car and other riders, that he is working within the meaning of the overtime rule. We do not agree with this contention. Instruction 54, for the operation of track cars, provides for a car driver who is "in charge of or responsible for the operation of the track car." The duties of the rider are simply an incident of his travel, and far removed from any conception of work as contained in the rules. Whether overtime rates should apply in the event the rider is called upon to aid in some movement of the car is not before us under the facts presented. Traveling during the meal period is governed by the same principles.

**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 claimant was properly compensated.

#### AWARD

Claim (a) denied. Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 24th day of September, 1943.