

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Messrs. Guy Kelly, Martin Tate, John O. Townsend and Donald W. Gillespie, B. & B. Department employees, be paid two (2) hours and thirty (30) minutes overtime November 8, 1939, between the hours 4:00 P. M. and 6:30 P. M., at their respective hourly rates under the provisions of Rule 26 as revised, of Agreement effective September 1, 1926.

EMPLOYEES' STATEMENT OF FACTS: Claimants Kelly, Tate, Townsend and Gillespie are members of a bridge and building gang and work under the supervision of Foreman John Ledwidge. Employees are assigned to outfit cars which are the home station and designated assembling point where employees' time begins and ends. Regularly established working hours are 7:00 A. M. to 4:00 P. M. with one (1) hour lunch period.

November 8, 1939, employees reported for work at the starting time of the work period, 7:00 A. M., at outfit cars which were located at Kingsburg, California. Foreman Ledwidge shipped the outfit cars from Kingsburg, California to Fresno, California, a distance of approximately 30 miles, by local freight, following which he and Claimants Kelly, Tate, Townsend and Gillespie, carrying their noon-day lunch with them were transported in the foreman's automobile, together with tools and equipment to Fresno, to perform work at the roundhouse.

At 4:00 P. M., the end of the work period, the outfit cars had not arrived as was anticipated by the foreman and the employees remained on duty at Fresno from 4:00 P. M. until 5:30 P. M. At 5:30 P. M. Foreman Ledwidge instructed the employees to load tools and equipment into his automobile and they traveled along the line of railroad in search of the local freight which was transporting the outfit cars. The local freight with the outfit cars was found at Selma at 6:30 P. M. and employees were released from duty. Employees then traveled with the outfit cars to their destination, Fresno, reporting for work the following morning at their regular starting time.

Foreman Ledwidge made no time allowances to employees for the work performed November 8, 1939, between the hours 4:00 P. M. and 6:30 P. M.

By letter dated December 4, 1939 (Employees' Exhibit "A") the Division Chairman presented to Carrier's Division Superintendent request that claimants be paid time and one-half under the provisions of Rule 26 for the hours worked, 4:00 P. M. to 6:30 P. M. November 8, 1939.

By letter dated December 30, 1939, (Employees' Exhibit "B") Carrier's Division Superintendent advised Division Chairman that claimants would be paid straight time for the overtime hours worked November 8, 1939, based on the principle of Rule 36.

(2) **The alleged claim in this docket is without merit and should be denied.**

The statement of claim alleges that the claimants, "... be paid two (2) hours and thirty (30) minutes overtime November 8, 1939, between the hours 4:00 P. M. and 6:30 P. M., at their respective hourly rates under the provisions of Rule 26 as revised, of Agreement effective September 1, 1926."

Rule 26 of the current agreement, as revised, is as follows:

"Except as otherwise provided in these rules **time worked** following and continuous with the regular eight (8) hour work period shall be paid for at the rate of time and one-half, computed on actual minute basis. Employees required to work continuously from one regular work period to another shall receive time and one-half rate after the expiration of the first regular work period until relieved." (Emphasis ours.)

The carrier submits that Rule 26, as revised, clearly does not support this claim. That rule specifically provides for the payment, at the rate of time and one-half, for, "time worked." The claimants did not work during the period covered by their claim, i. e., from 4:00 P. M. to 6:30 P. M. on November 8, 1939. During that time the claimants were traveling to and waiting for their outfit cars. The phrase, "time worked," as used in Rule 26, as revised, has never been considered or construed as including traveling and waiting time. The language is clear and unambiguous, and has been construed according to its ordinary meaning. It means the actual performance of such work as is ordinarily performed by employees coming within the scope of the current agreement.

In Award 1399 of this Division the petitioner claimed the over-time rate under Rule 26 of the current agreement for certain employees during a six hour period when they were traveling in their outfit cars from Los Molinos to Dunsmuir. The Division denied the claim and in its opinion (speaking through Referee Royal S. Stone) pointed out that:

"The case is not within Rule 26 because the hours for which additional compensation is wanted were not 'worked' continuous with regular work period or at all. The time was spent in waiting for the train which was to move them, and in traveling."

The foregoing conclusively establishes that Rule 26 in no way supports the claim in this docket and there being no other rule or provision of the current agreement that does support it, the carrier submits that the petitioner is in fact requesting that this Division establish and impose upon the carrier a rule not agreed to by the carrier. The principle that this Division has authority to interpret collective agreements but not to make them is too well established to require citation in support of it.

CONCLUSION

The carrier submits that it has conclusively established that the alleged claim in this docket is entirely without merit and therefore respectfully submits that it is incumbent upon the Board to deny it.

OPINION OF BOARD: The rules pertinent to the contentions here are as follows:

"Rule 26—Except as otherwise provided in these rules time worked following and continuous with the regular eight (8) hour work period shall be paid for at the rate of time and one-half, computed on actual minute basis. Employees required to work continuously from one regular work period to another shall receive time and one-half rate after the expiration of the first regular work period until relieved."

"Rule 34—Employees' time will start and end at designated assembling points for each class of employees."

"Rule 36—Employees required by direction of the management to leave their home station will be paid as follows:

- (a) All hours worked will be paid in accordance with practice at home station.
- (b) Where an employee returns the same day, when called or notified to leave home station in advance but continuous with regular work period will be paid at straight time rate from time he is required to report until his return, for all time waiting or traveling outside regular hours, excluding meal periods.
- (c) Employees called or notified after regular work period to leave their home station will be compensated on call basis for actual time traveling to and/or from scene of emergency, waiting or working outside their regular hours of service, excluding meal periods or time released for rest.
- (d) If an employee is held out overnight he will be paid his actual and reasonable expenses for board and lodging. No time waiting will be allowed after arrival at point to which sent, outside regular working hours. His time will commence on resuming work next day.
- (e) Employees will not be allowed time while traveling in the exercise of seniority rights or between their homes and designated assembling points, or for other personal reasons."

"Rule 39—Boarding cars or outfit cars will be the home station as referred to in these rules for employees assigned to such cars."

The Claimants are members of a Bridge and Building Gang assigned to outfit cars which are designated as their home station under Rule 39 and as their assembly point under Rule 34. On the morning of Nov. 8, 1939, the foreman had the outfit cars taken by local freight from Kingsburg, Calif., to Fresno, about thirty miles away, and then he and the Claimants, taking along their tools, equipment and noonday lunch, went in the Foreman's automobile to Fresno for work at the roundhouse. The outfit cars not having arrived at 4:00 P. M., the end of the shift, the foreman and the Claimants waited until 5:30, when the foreman had them load their tools and equipment into his automobile, and took them along the railroad line until 6:30 P. M. when he located the outfit cars at Selma and delivered Claimants there. They then traveled on the outfit cars to Fresno where they reported for their regular shift the next morning.

The Organization contends that as the Claimants' outfit cars constituted their designated assembly point, their time starts and ends there under Rule 34, and that as they were not returned there until two and one-half hours after their regular work period they were entitled to pay at the rate of time and one-half for the overtime under Rule 26.

The Carrier did not pay the Claimants for the extra two and one-half hours, but on presentation of the claim ordered them paid at the straight time rate, which it contends was properly "based on the principle of Rule 36." Thus there is no controversy as to Claimants' right to be paid for the two and one-half hours, and the sole question is whether the rate should be straight time or time and one-half.

It is apparent that Rule 36 does not apply, for it relates to employees required to leave their home station. In this instance the outfit cars comprising their home station went to the same point at which their work was required for the day and the only reason they did not remain with the cars was that being sent ahead by automobile, they could be performing useful work while the outfit cars were following by local freight.

The Carrier therefore does not contend that the incident is governed by the Rule but argues only that it is governed by "the principle of Rule 36." Assuming that in general a controversy can be governed by the principle of a rule which does not in terms apply to it, which we need not decide here, it is apparent that the proposition cannot be accepted if there is a rule directly applicable.

The Carrier contends that Rule 26 is not applicable because it refers to time worked, and because the Claimants were not actually performing labor during the two and one-half hours overtime. But Rule 34, with which Rule 26 must be read in order to ascertain the pay period, clearly refers to the period during which the employe is held away from his assembly point by the Carrier. It seems clear, therefore, that since Rule 36 does not apply to the circumstances of this claim, Rules 26 and 34 apply and that "time worked" as used in Rule 26 means the period starting and ending at the assembly point, in this case the outfit cars.

We conclude that (1) since under Rule 39 the outfit cars constitute the Claimants' home station, (2) since under Rule 34 their time starts and ends at the designated assembly point, and (3) since the record shows without dispute that the outfit cars constitute their assembly point, which is admitted by the Carrier's agreement that they are entitled to at least straight pay until they return there, the overtime in question therefore constituted work within the meaning and intent of Rule 26.

The Carrier also contends, as it did in Award No. 2448, Docket MW-2371, that the claim should be denied because it was allowed to remain dormant for some two years. What was said on the point in that award applies equally to this one.

The claim must be sustained.

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 employes involved in this dispute are respectively carrier and employes 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 there has been a violation 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 4th day of February, 1944.