Award No. 5313
Docket No. MW-5234

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) That the Carrier violated the Agreement by not compensating each of the members of the B&B Gang, Wymore Division, for three (3) hours at pro rata rates of pay on February 7, and again on February 8, 1947, in accordance with the provisions of Rule 35;

(2) That the claimants be reimbursed each for three (3) hours pay at pro rata rates on each of the dates referred to.

EMPLOYES' STATEMENT OF FACTS: B&B Mechanics R. E. Shores, C. O. Dohlgren, J. E. Gilbert, and G. M. Wilson, B&B Helper B. A. Crumb, and B&B Laborer J. E. Henry were members of Wymore Division B&B Gang No. 4, and on February 7 and 8, 1947 were headquartered in outfit cars at Nebraska City, Nebraska.

The regular starting time for this Gang was 8:00 A. M.

On the dates referred to, the weather was approximately 14 degrees below zero, and while members of the Gang were at breakfast, about 7:00 A. M. on each date, they were notified that there would be no work for them because of the extreme cold weather.

No compensation was allowed these employes on the dates involved in this claim.

The Schedule of Rules Agreement, dated December 1, 1946, between the two parties to this dispute, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in the Statement of Facts, these claimant employes were in their outfit cars in Nebraska City, Nebraska, when they were notified by their foreman because of weather conditions they would not be employed that day. The notification of the foreman came approximately one hour in advance of their regular starting time.

Rule 35 of the effective agreement states as follows:

"REPORTING AND NOT USED: When hourly rated employes are required to report at usual starting time and place for

In the light of the foregoing, the Carrier respectfully submits that the compensatory provisions of Rule 35 are not applicable when employes are not required to report for work at the usual starting time and place, therefore the claim in behalf of claimants named herein is completely unsupported and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were members of Wymore Division B&B Gang headquartered in outfit cars at Nebraska City, Nebraska. On February 7 and 8, 1947, while at breakfast they were notified about 7 A. M. that there would be no work for them because of the extremely low temperatures. The regular starting time for the gang was 8 A. M. They claim 3 hours at pro rata rate in accordance with the provisions of Rule 35 which reads as follows:

"REPORTING AND NOT USED

> Rule 35. When hourly rated employes are required to report at usual starting time and place for the day's work and conditions prevent work being performed, they will be allowed a minimum of three (3) hours at pro rata rate. If held on duty over three (3) hours, actual so held will be paid for. Except in an emergency and when required to patrol track during heavy rains, employes reporting will not be required to work in the rain for the sole purpose of receiving payment under this rule."

It will be noted that Rule 35 makes no distinction between employes in camp or outfit cars and employes at home or other abiding places. It is true that under Rule 32 the time of employes will start and end at designated assembling points and that for employes in camp or outfit cars, such camp or outfit cars will be the assembling point. Clearly, however, that rule must be read in conjunctiton with other rules of the Agreement such as the starting time rule, overtime rules and Rule 35. A literal interpretatiton of Rule 32 standing alone would lead to most absurd results defiant of all reasonable concepts of what the intent of the parties was in formulating the Agreement. Obviously employes in camp or outfit cars are not considered as working 24 hours each day that they are so quartered, yet on such days they are at the assembling point, as defined in Rule 32. The camp or outfit cars have in effect, a dual character. For one purpose they are the place of abode of the men assigned thereto and for pay purposes under Rule 32 on days when work is performed they are the point from which pay starts and ends at the conclusion of the day's work. It is this situation which leads to difficulty in correctly applying Rule 35.

It is to be noted that in order to be eligible to receive pay under Rule 35 employes must be required to report at usual starting time and place for the day's work. Its obvious purpose is to assure the employes some compensation for having prepared themselves for the day's work in getting to the assembling point at the usual starting time, even though there may be no work for them at the time of reporting. Here the claimants were at the usual place as such place is defined in Rule 32 at 7 A. M. in the morning on the dates involved herein because that was their place of abode, not because at that time they were required to report for work. If advised at a reasonable time prior to the regular starting time that conditions prevent work from being performed (it is not denied by the employes that conditions did prevent work from being performed), it cannot be said that they were required to report at the usual starting time for the day's work. What constitutes a reasonable advance notice, of course, depends upon the circumstances in each case.

The Carrier should not be allowed to take undue advantage of the fact that the employes are quartered at the assembling point and defeat the right to compensation under Rule 35 by giving notice at any time before the usual starting time. Here, however, the claimants were notified an hour before the

usual starting time that conditions would prevent work from being performed. If they had not been quartered in outfit cars but were abiding elsewhere, it is a reasonable presumption that such notice would be sufficiently in advance of the regular starting time to spare them the trouble of leaving their places of abode to travel to and report at the assembling point. Under all of the facts and circumstances here presented, we conclude that reasonable advance notice of no work on these days was given to claimants and, therefore, the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of April, 1951.