Award No. 5362
Docket No. MW-5296

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MAINE CENTRAL RAILROAD COMPANY

PORTLAND TERMINAL COMPANY

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

(1) That the Carrier violated the effective agreement when they required Bridge & Building Foreman Pearl Gross and crew to stand by for emergency service between the hours of 4:30 P. M. and 6:30 A. M. on June 30 and July 1, 1949, and improperly compensated them for time held on duty;

(2) That Bridge & Building Foreman Gross and the members of his crew who were required to stand by during the period referred to in part (1) of this claim, be paid the difference between what they received at the time and one-half rate for a period of 2 hours and 40 minutes and what they should have received at their time and one-half rate for a period of 14 hours.

EMPLOYES' STATEMENT OF FACTS: At 4:30 P. M., June 30, 1949, while stationed at Bowdoinham, Bridge & Building Foreman Pearl Gross instructed his Crew to stand by until further advised, as it was probable that they would be needed at Baring where fire had destroyed a Bridge.

The members of the Crew were instructed not to leave their camp cars.

At 7:25 P. M., June 30, 1949, the Crew and camp were picked up by work train and moved to Baring, Maine, arriving at 6:30 A. M., July 1, 1949.

Claim was filed in behalf of the employes, requesting the difference between what they received at the time and one-half rate for a period of 2 hours and 40 minutes and what they would receive at the time and one-half rate for a period of 14 hours.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated May 28, 1942, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 23(a) of the current agreement reads as follows:

> "Except as otherwise provided in this agreement, eight (8) consecutive hours exclusive of the meal period shall constitute a

Rule 27 of the current Agreement—the rule relied upon by the Employes in support of their claim—is a rule agreed to by the Parties to cover a specific condition—that condition being "when an employe called to **perform work** outside of and not continuous with the regular assigned hours . . ." In this instance, the employes in question **performed no work whatever** between the hours 5:30 P. M., June 30th and 9:40 A. M., July 1st. They did render "stand by" service from 4:30 P. M. to 5:30 P. M., June 30th, for which they were paid under Rule 27 two hours and forty minutes at the rate of time and one-half.

The Employes have chosen to ignore the provisions of Rule 32(a) of the current Agreement which definitely covers in the instant case.

The movement of outfit cars and crews, either on or off their assigned territory, outside of regular assigned hours, is of routine nature. Nothing would have been heard of the move here in question had it not been for the interim between 4:30 P. M. and 5:30 P. M. approximately, during which the crew was asked to "stand by" awaiting instructions as to whether or not move would be made.

The Employes are endeavoring to tie in a routine move of outfit cars and crew, which specifically falls within the confines of Rule 32(a) with Rule 27, Call Rule. This is definitely not well founded and is without merit.

This crew has been allowed the full payment provided for in the rules of their current Agreement.

The claim should be declined.

(Exhibit not reproduced.)

OPINION OF BOARD: The issue here before the Board is whether Petitioner occupied a standby status during that period of time more particularly described in part (1) of claim herein.

No question is raised with reference to Petitioner being placed in such a status at 4:30 P. M. Likewise it is not controverted Respondent did not issue a categorical statement with reference to the time such status terminated. The Schedule does not specify a particular or definite way by which an employe is to be removed from such status. There is no question that the power to remove does exist. We must therefore look to what was said and done in order to determine whether or not Petitioner was removed at the time alleged by Respondent.

Petitioners ceased to perform their duties at 3:30 P. M. Reference thereto is made only because under normal circumstances the employes may reasonably expect to perform their duties on the succeeding day at the same place and hence are under no compulsion to linger or remain at or close to their living facilities provided by Respondent. This is so because Carrier as a rule outlined or programmed the work for reasons of operating efficiency. Likewise if Carrier contemplated a different location on the succeeding day it would duly advise Petitioner of such information in order that an employe might be present when his living accommodations were moved or proceed to his destination by other means if he chose to do so. Under either method the employe is not paid.

Here we find Respondent expected to move to a different location but did not know when such movement would start. As a result the employes were placed in a duty status. When the departure time and destination was learned, why should the employes consider they continued in a duty status? While such an order as was issued possibly was unusual it was not of the prohibited type. There is nothing in the record to show the employes were forbidden to proceed to their destination by means other than as provided by Respondent.

Had the employes been notified of the movement at the close of the work day it would seem any claim would be ill-grounded in fact. We cannot see the distinction between issuing an order when the employes are on duty and when they are not on duty provided in the latter event they are present. Here they acted no differently subsequent to its issuance than they otherwise would have. This is shown by their actions in proceeding to their destination. To avoid confusion with reference to the order we refer to, we mean the order to entrain. When that was issued the duty status ceased to exist.

With reference to Employes' Exhibit A, a sworn statement is not entitled to greater probative value than an unsworn statement. With reference to its contents, the acts of the parties thereto are contradictory.

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 the Schedule was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of May, 1951.