

Award No. 5670
Docket No. MW-5654

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MAINE CENTRAL RAILROAD COMPANY

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

(1) That the Carrier violated the agreement when they failed to compensate Phillip T. Spruce at the Plow Operator's rate of pay for waiting and riding time service rendered between the hours of 4:30 and 7:15 P. M., February 16, 1950;

(2) That Phillip T. Spruce be paid the difference between what he did receive at the Trackman's rate of pay and what he should have received at the Plow Operator's rate of pay during the hours referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Phillip T. Spruce is regularly employed as a Trackman at Lewiston, Maine.

On February 15, 1950, Spruce was instructed to proceed to Waterville, Maine to operate a snow plow between Waterville and Leeds Junction and return to Waterville.

Operator Spruce worked as directed, operating the snow plow between Waterville and Leeds Junction, and was compensated at the rate of pay applicable to snow plow operators until the expiration of his assignment, or 4:30 P. M.

Upon his return to Waterville in the P. M., of February 16th, Spruce was instructed to return to his regular position as Trackman at Lewiston, leaving Waterville on Train No. 16 at 6:04 P. M. and arriving in Lewiston the same evening. He arrived at his home station at 7:30 P. M.

The waiting and travel time service rendered by Spruce between the hours of 4:30 and 7:30 P. M. was paid for at the rate applicable to Trackmen.

There is no dispute regarding the manner in which Spruce was paid prior to 4:30 P. M., February 16th.

The Employes claimed that Spruce should have been paid at the Snow Plow Operator's rate for the Waiting and Travel time service rendered between 4:30 P. M. and 7:30 P. M.

The Carrier contended that Spruce was properly paid at the Trackman's rate and denied the claim.

7:30 A. M.-4:30 P. M.—8 hrs. at straight time plus 1 hr. at time and one-half at Snow Plow Operator's rate (same as in the instant case).

4:30 P. M.-5:15 P. M.—45 mins. straight time rate of Plow Operator—travel time.

5:15 P. M.-6:15 P. M.—1 hr. at time and one-half Plow Operator's rate—working as Plow Operator and released from that service at 6:15 P. M.

From 6:15 P. M. until arrival at Lewiston headquarters' point Waiting and Traveling Time paid at Trackman's pro rata rate.

In conclusion, the Carrier offers—

1. The Employees recognize Mr. Spruce was a Trackman on February 15, 1950, and retained that classification while traveling from Lewiston to Waterville, where he was to perform Snow Plow Service, as directed, and that he was properly paid the Trackman's pro rata rate for such travel time.
2. The Employees recognize that Mr. Spruce still retained his classification of Trackman while being held at Waterville for Snow Plow Service, and that he was properly paid the Trackman's pro rata rate for the time so held under the provisions of Rule 29 (b).
3. The Employees recognize Mr. Spruce commenced work in Snow Plow Service at 3:30 A. M., February 16, 1950, and was released from such service at 1:30 P. M. same date; that he was paid the Plow Operator's rate to the end of his normal assignment, **NOT BECAUSE HE WAS IN SNOW PLOW SERVICE AT 4:30 P. M., BUT BECAUSE HE HAD WORKED MORE THAN FOUR (4) HOURS IN A HIGHER CLASS OF SERVICE, in conformity with the provisions of Rule 33 (a).**
4. The instant claim is for waiting and traveling time at Plow Operator's pro rata rate. Inasmuch as Mr. Spruce was **not a Snow Plow Operator** at 4:30 P. M. on February 16, 1951, and **had not been a Snow Plow Operator since 1:30 P. M. on that date**, he having reverted to his regular classification of Trackman at that time, **HOW COULD HE CONSISTENTLY BE PAID FOR WAITING AND TRAVELING TIME—4:30 P. M. to 7:15 P. M.—AT SNOW PLOW OPERATOR'S RATE?**

We respectfully request that the claim of the Employees be **DENIED**.

All data submitted incident to this claim, as outlined in this submission, has been presented to the Employees and made a part of the particular question in dispute.

OPINION OF BOARD: This case presents the question whether return traveling and waiting time is payable at the rate of the regular assignment or at the higher rate of the position upon which work was performed away from the designated assembly point where time starts and ends. The going, as distinguished from the return, traveling and waiting time is not in dispute. Claimant was paid at the pro rata rate of his regular assignment and he claims the higher rate.

Rule 32 (b), so far as pertinent here, reads:

"Employees not in outfit cars who are required by the direction of the Management to leave their home station will be allowed actual time for traveling or waiting during the regular working hours. All

hours worked will be paid for in accordance with practice at home station. Traveling or waiting time during recognized overtime hours at home station will be paid for at pro rata rate."

Rule 33 (a) reads:

"When employes are worked two (2) hours or less on any one day in a higher class of work they will not be paid the higher rate. If worked more than two (2) hours and less than four (4) hours they will be paid the higher rate for the actual time worked. If worked four (4) hours or more they will be paid the higher rate for the eight (8) hours of normal assignment. Overtime will be paid at the rate applicable to the overtime work performed."

FIRST. If Claimant had worked less than 2 hours in the higher class of work, both his pay and his traveling and waiting time would have been at the lower rate. And if Claimant had worked more than 2 but less than 4 hours in the higher class of work, his traveling and waiting time would have been at the lower rate, because the higher rate applies only for the time "actually worked" in the higher class of work. Finally if Claimant worked 4 hours or more in the higher class of work and this he did (from 3:30 A. M. to 1:30 P. M.), he was entitled to be paid the higher rate "for the 8 hours of normal assignment" (until 4:30 P. M.) and so he was paid. He performed no work after 4:30 P. M. (and in fact none after 1:30 P. M. when he was released from the higher class of service) and so derived no right to overtime pay after 4:30 P. M. from Rule 33 (a); but Rule 32 (b) specifically entitles him to be paid at the pro rata rate for this time after 4:30 P. M. which was traveling or waiting time "during recognized overtime hours at home station."

SECOND. The traveling and waiting time rule does not provide, one way or the other, that pay for traveling and waiting time turns on the class of service performed away from home station.

It is the basic intention of the Agreement to pay for all time, both time actually worked and time spent otherwise at the direction of the Carrier, at the rate of the regular assigned position except in the circumstances and to the extent that some other specific rule requires payment of a different rate. In this view, when the traveling and waiting rule is silent, as it is here, the claim is good only if the Organization can lay hold of something in the composite service rule that authorizes or requires payment of the higher rate claimed for the traveling and waiting time.

THIRD. The composite service rule makes no provision for travel and waiting time to be paid at the higher rate; and it manifests a plain intention to pay the higher rate only for work actually performed in the higher class with but one specific exception which the Carrier has satisfied by payment of the higher rate until 4:30 P. M. The time after 4:30 P. M. was overtime spent at the direction of the Carrier, but it was not "overtime work performed" in the higher class.

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 Agreement was not violated.

5670—11

901

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.