Award No. 5746
Docket No. MW-5633

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC (Pacific Lines)

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

(1) That the Carrier violated the effective agreement when they failed to compensate Water Service Mechanic Marvin Ugstad for three (3) hours travel time service on January 13, 1950;

(2) That Water Service Mechanic Marvin Ugstad be compensated at his straight time rate for travel time service performed between 4:30 P. M. and 7:30 P. M. on the date referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Traveling Water Service Mechanic Marvin Ugstad, is assigned with headquarters at Grants Pass, Oregon and renders service between 7:30 A. M. to 12:00 Noon, and 12:30 P. M. to 4:00 P. M., five days a week with Saturday and Sunday as rest days.

On Friday, January 13, 1950, Water Service Mechanic Ugstad was assigned by the Carrier to make emergency repairs to the Locomotive Water Supply at Glendale.

After completing the required repairs, Mr. Ugstad returned to his headquarters at Grants Pass on freight train No. 736, leaving Glendale at 4:30 P. M. and arriving at his headquarters at 7:30 P. M.

A claim was filed in behalf of Mr. Ugstad for 3 hours at his straight time rate of pay for rendering the travel time service.

Claim was declined.

The agreement in effect between the two parties to this dispute dated September 1, 1926, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As previously stated, Claimant Ugstad is a Traveling Water Service Mechanic with headquarters at Grants Pass, Oregon.

On January 13, 1950, Mr. Ugstad was required by the Carrier to make emergency repairs to the Locomotive Water Supply at Glendale.

the parties that certain special rules, such as Rule 42, modify the provisions of Rule 26.

Rule 26 is applicable to employes covered by Rule 42 only to the extent provided for in Rule 42, namely, "For work performed continuous with the regular work period in excess of eight (8) hours **(exclusive of time waiting and traveling)**, such employes shall be compensated in accordance with the provisions of Rule 26 in addition to the monthly rate." The Memorandum of Agreement modifies the language "exclusive of time waiting and traveling" to the extent of providing certain compensation in the case of "travel by motor car, truck or automobile," but there is no modification in the case of travel by train, the rule specifically excluding such compensation.

The petitioner has also referred to Rule 36(b) of the current agreement, reading as follows:

> "(b) Where an employe 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."

Here again is a general rule which does not in any manner modify the specific provisions of Rule 42. Rule 42 is, as pointed out above, complete in itself and no reference is made in Rule 42 to Rule 36(b) of the current agreement, although specific reference is made to other compensation rules clearly indicating when such rules are applicable.

It is, of course, a well-recognized principle of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former (See Award No. 4507). The agreement provisions applicable to this case are the special rule, identified as Rule 42, and covering "employes either temporarily or permanently assigned to positions requiring them to work, wait or travel as regulated by train service or the character of their work," including the claimant in this docket.

Under the provisions of Rule 42 the claimant is paid a monthly salary and the only agreement provisions providing additional compensation over and above the monthly salary are precisely spelled out in Rule 42 itself and the Memorandum of Agreement in connection therewith.

The parties to the agreement, having specifically agreed "For work performed continuous with the regular work period in excess of eight (8) hours (exclusive of time waiting and traveling), such employes shall be compensated in accordance with the provisions of Rule 26 in addition to the monthly rate," and thereafter agreed to allow certain compensation when "required to travel by motor car, truck or automobile," it is entirely inconsistent for the petitioner to contend that compensation must also be allowed for traveling by train, as in this case, because the rule excludes such payment.

CONCLUSION

The carrier asserts that it has established that the claim in this docket is without basis or merit, and therefore, respectfully submits that it should be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The Committee makes this claim in behalf of Traveling Water Service Mechanic Marvin Ugstad and asks that he be paid

at straight time for 3 hours used in traveling on January 13, 1950 when, between 4:30 and 7:30 P. M., he returned from Glendale, Oregon to Grants Pass, Oregon, his headquarters, on a freight train.

Claimant is a regularly assigned Traveling Water Service Mechanic with headquarters at Grants Pass, Oregon. This is a monthly rated position with no regularly assigned hours but with Saturday and Sunday as rest days. When called away from his headquarters Claimant travels by motor car which is furnished by Carrier.

On Friday, January 13, 1950, Claimant was assigned to make some emergency repairs to Carrier's Locomotive Water Supply at Glendale, Oregon. He went to Glendale in a motor car and made the necessary repairs. When he had completed the work the weather had become such that he did not think it advisable to return to Grants Pass in his motor car but did so by riding Carrier's freight train No. 736. This freight train left Glendale that day at 4:30 P. M. and arrived at Grants Pass at 7:30 P. M. It is for this period of three hours for which this claim is made.

Carrier contends the claim is without merit because Claimant comes within Rule 42 of the parties' agreement then effective. This rule, as far as here material, provides as follows: "Employes * * * assigned to positions requiring them to work, wait or travel as regulated by train service and the character of their work, and for whom hours cannot be definitely regulated, * * *." Claimant is assigned a motor car and customarily travels, when called upon to do so, by that means. He is not an employe whose work, waiting or traveling is regulated by train service. Consequently he does not come within that class of employes to whom Rule 42 is applicable.

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

* * * *

(b) Where an employe 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."

These rules of the parties' effective agreement are here applicable.

While not material here it should be pointed out that by Memorandum of Agreement dated May 25, 1950 and effective June 15, 1950 this has been changed by making Rule 26 applicable thereto on and after that date.

It is true that Claimant rode a freight train for the period of time for which he here makes claim, due to weather conditions then existing. However, we are not of the opinion that doing so on this one occasion had the effect of reclassifying him for the purpose of determining the basis on which he was entitled to be paid.

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 Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of May, 1952.