

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

READING COMPANY

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

- (1) That the Carrier violated the agreement by not compensating Crane Operator Paul Wolfe at the rate of time and one-half for services rendered outside of his regularly assigned hours while traveling from Lebanon to Coatesville during the period November 1, to November 5, 1947;
- (2) That Crane Operator Paul Wolfe be reimbursed for the difference between compensation received at straight time rate and what he should have received at time and one-half rate for services rendered outside his regularly assigned hours while traveling between Lebanon and Coatesville during the period November 1 to November 5, 1947, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Mr. Paul Wolfe, in November 1947, was a Crane Operator with headquarters at Lebanon. On November 1, 3, 4 and 5, 1947, Mr. Wolfe was required to travel by means of his own automobile from Lebanon to Coatesville and return. Mr. Wolfe was assigned to operate a Jordan Spreader at Coatesville during the period referred to.

On the four (4) days involved in this claim, Mr. Wolfe operated his car before and after his regular assigned hours for a total of five (5) hours on each of these days.

The Carrier compensated Mr. Wolfe for five (5) hours per day at his pro rata rate.

The Employees contend that Mr. Wolfe should have been compensated at the time and one-half rates in accordance with Rule 16(a) while driving his automobile in overtime hours.

The Carrier contends Rules 21(b) and (g) are controlling and that Mr. Wolfe was properly paid.

The Agreement between the two parties to this dispute dated January 1, 1944, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

Rule 16 (a) is prefaced with the words "Except as otherwise provided in these rules". Therefore, Rule 21 is an exception to Rule 16.

The Carrier submits that the rules involved and quoted herein clearly contemplate a distinction between "time worked" and "travel time". Since Rule 21 (b) by its specific language provides for payment of straight time rate for traveling outside the regular assigned hours and Rule 21 (g) provides an allowance for use of his private automobile, it is the Carrier's position that the time consumed by claimant Wolfe in the instant case in traveling in his private automobile was not and cannot properly be considered "time worked" within the meaning and intent of Rule 16.

Under the facts and evidence presented hereinbefore the Carrier maintains that Crane Operator Wolfe was properly compensated at straight time rate for time consumed in traveling in his private automobile between Lebanon and Coatesville before and after completion of his regularly assigned work period, and in addition was compensated for the mileage made in the use of his automobile on the dates of November 1, 3, 4 and 5, 1947, all in accordance and compliance with the rules and regulations of the Maintenance of Way agreement dealing with travel time. Therefore, the claim as submitted is without merit and unjustified and Carrier respectfully requests that same be denied.

The evidence contained in this submission has been discussed in conference and handled by correspondence with representatives of the Brotherhood of Maintenance of Way Employees.

OPINION OF BOARD: There is little if any dispute as to the facts involved here. The matter in controversy, at least in the main, calls for an interpretation of certain Rules of the controlling Agreement and an application thereof to the facts.

Paul Wolfe, a crane operator, in whose behalf the claim was made, had his headquarters at Lebanon, Pa. On November 1, 3, 4 and 5, 1947 he was assigned to operate a Jordan Spreader at Coatesville, Pa. On request of the Carrier he used his own automobile for transportation between the two points. He was paid mileage for the use of the automobile. He was also paid straight time for five hours travel time on each of the four days.

The claim is that he should have been paid for the travel time at the rate of time and one-half. The theory is that his travel time was overtime worked before and after his assigned hours.

The Carrier, on the other hand, says that this was not work but was travel time within the meaning of the Rules entitling him to compensation therefor at the straight time rate.

Parts of a number of Rules require consideration in the determination here.

Rule 11 (a), being a part of the Basic Day Rule, provided:

"Except as otherwise provided in these rules eight consecutive hours, exclusive of the meal period, shall constitute a day's work."

It appears to be conceded that Wolfe performed a day's work at Coatesville on each of the four days.

Rule 13 (e), a part of the Hours Paid For Rule, provided:

"Except as otherwise provided in these rules, only the hours between the beginning and release from duty, exclusive of meal period, shall be paid for."

Rule 14 (a), a part of Beginning and End of Day-Hours of Service Rule, provided:

"Employees' time will start and end at designated points such as tool houses, road bunk cars, shops, or where jobs are bulletined.
* * *"

Thus under Rules 13 (e) and 14 (a) the days of work to which Wolfe was assigned and for which he was entitled to be paid under the assignment began and ended at Coatesville. What he was entitled to receive in addition depends upon other Rules.

Rule 16 (a), a part of the Overtime Rule, provided:

"Except as otherwise provided in these rules, time worked or held on duty in advance or following and continuous with the regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rate, * * *,"

Rule 21 (b) and (g), parts of the Travel Time Rule, provided:

"(b) Employees not in camp cars will be allowed straight time for actual time waiting or traveling by passenger train or other public conveyance by the direction of the Management during or outside their regular assigned hours on the days comprehended by their assignment, either on or off assigned territory.

(g) Employees requested by the Company to use their private automobiles will be allowed mileage made for the use thereof in accordance with the mileage rates established by the Company."

If, as the Organization contends, this travel time may be regarded as time worked or held on duty in advance or following and continuous with the regularly assigned eight-hour work period, the appropriate rate of compensation is at time and one-half under Rule 16 (a).

Rule 21 (b) gives at least some travel time a classification to which Rule 16 (a) cannot apply. Does this travel time fall within this classification? If so, does it carry the Rule 21 (b) rate? If it shall be classified as travel time but does not carry the Rule 21 (b) rate, what rate is applicable?

The classification of Rule 21 (b) includes "traveling by passenger train or other public conveyance." Travel by "passenger train" has no doubtful meaning. It cannot be misunderstood. The meaning of travel by "other public conveyance" is not free from doubt. The meaning therefore must be ascertained from what the parties intended that it should mean as disclosed by other provisions of the Agreement and the surrounding circumstances as disclosed by the record.

There is an absence of anything in the Agreement to indicate that it was the intention that travel time should be regarded as overtime except Rule 16 (a) itself. It may be, but here we do not decide, that in the absence of qualification or exception the travel time here would be regarded as overtime under this Rule.

The Rule, however, in its terms provides for exceptions. As an exception Rule 21, and particularly (b) and (g) became a part of the Agreement.

It could conceivably be said under Rule 21 (b) alone that it was not the intention that travel time of an employee in his automobile, as here, was not removed from the purview of Rule 16 (a). However, when it is read with Rule 21 (g) it appears that it was intended that it should be removed and excepted.

Rule 21 (g) read with Rule 21 (b) and considered along with the entire Rule and its apparent purpose as a limitation of and exception to Rule 16 (a) leads to the conclusion that it was the intention of the parties that all travel time outside of regularly assigned hours of work including that of an employee using his automobile in his own public travel was embraced in the

travel time provisions of Rule 21 and excluded and excepted from the operation of Rule 16 (a); that the manner of mention of use of "private automobiles" in the travel time Rule carries with it a reasonable inference that it was the intention of the parties that it should be read with and controlled by 21 (b) and not 16 (a).

This leads to the further conclusion that Wolfe was entitled to travel time pay at the straight time rate.

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 Employees involved in this dispute are respectively Carrier and Employees 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 30th day of June, 1952.