

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) That the Carrier violated the agreement when it required certain road service employees to return to their camp cars while on a week-end visit to their homes, to perform emergency work and refused to compensate them for the travel time consumed;

(2) That Pile Driver Mechanics C. R. Settlemyer, C. E. Kagarice, D. L. Thomas and M. A. Bielefeldt be allowed pay at their respective straight time rates of pay for the travel time consumed in returning to their camp cars prior to the termination of their regular week-end visits to their homes.

EMPLOYEES' STATEMENT OF FACTS: Pile Driver Mechanics C. R. Settlemyer, C. E. Kagarice, D. L. Thomas and M. A. Bielefeldt are assigned to a pile driving crew with assigned headquarters at their outfit cars, with Mondays through Fridays as their regular assigned work week.

At the conclusion of their tour of duty on Friday, May 18, 1951, the Mechanics referred to above, together with the other personnel of the crew, left their outfit cars at Burkburnett, Texas, and proceeded to their respective homes as was customarily done by the employees of this gang.

Account of a washout of the Carrier's facilities near Red River on Saturday, May 19, 1951, Superintendent C. A. Birge called head mechanic J. N. Griffith and requested that he use his personal automobile to call and transport the aforementioned mechanics to Burkburnett, Texas, for the purpose of performing emergency work at the washout. Each of the aforementioned mechanics responded to the call and complied with all instructions.

Claimant Settlemyer was called and commenced traveling at 5:00 P.M. on May 19, 1951, the other three claimants' time starting at 4:00 P.M., all of them arriving at their outfit cars at 8:00 A.M. on May 20, 1951.

Claim for pay at the straight time rate while traveling was declined by the Carrier.

the rules fit the facts and circumstances in each case, and to collect compensation which is not authorized and supported by those rules on the basis and evidence here involved.

General Chairman Jones also contends in his letter of July 26, 1951, fifth paragraph, that when employes' rest days were disturbed they should not have been required to respond to a call that would require them to leave their homes and return to their home station without being compensated for such time. Whether they should or should not be compensated for such time is a matter of negotiation between the parties and not for this Board to decide. This Board has no authority to decide such matters and since the rules do not authorize payment for such time, but expressly provide they will not be paid therefor, the claims are without merit and must be denied.

Payment of these claims not being supported and authorized by the agreement rules here involved, but being clearly and expressly refuted thereby, the Carrier requests that they be denied.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits are not reproduced.)

OPINION OF BOARD: The claimants are employed as members of system pile driver gang in outfit cars under Foreman R. C. Carter, Monday through Friday each week under the 40-hour week agreement effective September 1, 1949. Their rest days are Saturday and Sunday.

When their tour of duty ended Friday, May 18, 1951, the claimants left the outfit cars at Burkburnett, Texas, and proceeded to their respective homes to spend the week-end. On Saturday, May 18, 1951, a washout occurred on the Carrier's property near Red River. As a result of this occurrence the Division Superintendent contacted head mechanic J. W. Griffith, requesting him to use his automobile to call the claimants and transport them to Burkburnett, Texas, to perform emergency work in connection with the washout. The claimants each responded to the call and complied with instructions. One claimant left later than the others, which is not material here. They all arrived at the outfit cars at 3:00 A. M., on May 20, 1951.

Claim for straight time while traveling was denied by the Carrier. The claim was progressed through the proper channels on the property. The claim is properly before this Board for determination.

Article 19 of the current agreement between the parties, revised September 1, 1950, provides:

Rule 1. "Employes will be allowed, when in the judgment of the management conditions permit, to make week-end trips to their homes at their own expense. Free transportation will be furnished consistent with the regulations."

The Employes contend that when a week-end trip home is interrupted by the Carrier's direction the above quoted Article 19, Rule 1, is no longer applicable, especially so when they are requiring to travel by transportation as directed by the Carrier, as in the instant case.

The agreement contemplates they will perform such service and will be paid therefor as the agreement provides. The dispute here is for travel pay—not for service or work performed.

The following rules are applicable in some particulars:

Article 12, Rule 2. "Except as per Rule 1 of this Article, (Rule 1 is inapplicable here) employes who are required by the direction of the management to leave their home stations, 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. Travel or waiting time during the recognized overtime hours at home station, will be paid for at the pro rata rate."

Rule 3. That part of the rule reading as follows: "* * * Employes will not be allowed time while traveling * * *, or between their homes and designated assembling points, or for other personal reasons."

The main contention of the Employes in the instant case is that outfit cars constitute the home station of road-service employes during their regular assigned work week or period, but the homes of the respective claimants on their rest days, or in this case Saturday and Sunday, are their home stations. We are not in accord with the Employes' position in this respect. Analyzing and applying the above cited rules to the factual situation presented here, especially Article 12, Rule 2, it is clear that rule applies only to travel time between the home station (that is a station provided by the Carrier in which the employe works, or from which he works, or generally where he obtains instructions with reference to his work), in this instance the camp cars, or outfit cars, and does not apply to travel time between the employes' home and their home station, the camp or outfit cars. While the rules may seem harsh or inequitable, this Board cannot rewrite the rules. The remedy is negotiation on the property for a change in the rules to meet the conception of travel pay, as contended for by the Employes. Under the rules, as stated, such time will not be paid for. The claim should 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 the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.