

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Minneapolis, St. Paul & Sault Ste. Marie Railway Company that Messrs. Louis Colgrove, Marvin Anderson, John L. de Jardns and Charles W. Niemi be allowed additional compensation of three hours and one-half each at the half-time rate of pay while traveling in outfit cars from Mellon, Wisconsin, to Minneapolis, Minnesota, on July 14 and 15, 1948 under the Carrier's orders.

EMPLOYES' STATEMENT OF FACTS: The determination of this claim rests upon the provisions of Rule 27 of the February 1, 1945 agreement reading:

"Employees regularly assigned to outfit cars, and traveling by direction of the Management in such cars, will be allowed actual time at straight time rate for traveling or waiting during the regular working hours and for Sundays and holidays during hours established for work period on other days. When traveling in outfit cars between the end of the regular hours of one day and the beginning of the regular hours of the following day, the only time allowed will be for actual time traveling after 10:00 P.M. and before 6:00 A.M., and at one-half time rate."

The claimants were members of Signal Crew No. 1, assigned to outfit cars as defined in Rules 62 and 63 of the working agreement, and were traveling on the Carrier's orders from Mellon to Minneapolis following their regular tour of duty ending July 14, 1948, with the understanding, train service permitting, that the gang would perform certain work enroute.

The outfit cars were placed on a passing track at Mellon about 4:00 P.M. July 14 and were picked up by train No. 128 about 11:30 P.M.

Train No. 128 laid over at Park Falls, Wis., and the outfit cars continued their journey from there, departing about 7:30 A.M. July 15, for Minneapolis, Minn.

When train No. 128 arrived at Park Falls at 1:30 A.M. the claimants' travel time as comprehended in Rule 27 was terminated. This termination of time was effectuated prior to the time the claimants' outfit cars arrived at their destination, namely, Minneapolis, Minn. The claim before this Board

the reason that the rule is very clear and specific and is not susceptible to any misinterpretations. The first part of Rule 27 specifically provides that the Company will pay for traveling time and waiting time during the regular working hours on week days and the same for rest days and holidays. The latter part of the rule which governs the issue before us specifically provides that they will only be paid one-half time for the time actually traveling between 10:00 P.M. and 6:00 A.M. The rule was predicated on the fact that when they were actually traveling in outfit cars after 10:00 P.M. and before 6:00 A.M. their rest was more or less disturbed and for that reason they receive pay at the one-half time rate during the hours specified. If it were intended that waiting time should be paid for at the one-half time rate in addition to traveling time after regular work hours the rule would have so stated. On the contrary, it only provides for payment when actually traveling and the position that the organization has taken is in complete disregard of the original intention and Rule 27 of the contract parties. It is obvious there is no obligation on the part of the Carrier to pay for waiting time after 10:00 P.M. and before 6:00 A.M.

As indicated, our contract with the Signalmen became effective February 1, 1945 and for a period of over three years the Carrier made no payments for waiting time after 10:00 P.M. and before 6:00 A.M. The Committee accepted this action without protest and without even questioning it and it seems to us that the failure to protest sooner constitutes an implied recognition of the property of the Carrier's payments under the provisions of Rule 27.

In discussing this case with General Chairman Thaemert, he suggested that we dispose of this dispute by accepting the findings of your Board in a Boston & Maine case which had previously been submitted to your Board. I advised the General Chairman that the factual situations involved in that case were not identical to the situation involved here due to the fact that the rules involved on both properties were different and work was performed when set out at Park Falls. Our Rule 27 specifically provides for payment of only actual time traveling while this was not so under the provisions of the Boston & Maine rule.

All data submitted in support of our position has been presented to the claimants.

The Carrier submits that the claim is without merit and is not supported by any rules and respectfully recommends to the Board that claim be denied.

OPINION OF BOARD: This claim involves four members of Signal Crew No. 1, regularly assigned to outfit cars, who each seek additional compensation, under the provisions of Rule 27 of the parties effective Agreement with Carrier, for three hours and one-half at one-half time rate for time spent in their outfit cars on July 15, 1948 between the hours of 1:30 A.M. and 5:00 A.M.

Rule 27 provides, insofar as here material, that:

"Employees regularly assigned to outfit cars, * * * *. When traveling in outfit cars between the end of the regular hours of one day and the beginning of the regular hours of the following day, the only time allowed will be for actual time traveling after 10:00 P.M. and before 6:00 A.M., and at one-half time rate."

It will be observed that this provision does not expressly include any compensation for time spent waiting between the end of the regular hours of one day and the beginning of the regular hours of the day following, but clearly excludes it by limiting compensation to "actual time traveling" between 10:00 P.M. and 6:00 A.M.

Signal Crew No. 1 completed its duties at Mellen, Wisconsin on July 14, 1948 and, about 4:00 P.M., put its outfit cars on the passing track. Train No. 128 picked them up about 11:30 P.M. on the same day and hauled them to Park Falls, Wisconsin a distance of some thirty-four miles. About 1:30 A.M. July 15, 1948, these outfit cars were set out at Park Falls where they remained until 7:30 A.M. of the same day. At 5:00 A.M. the Crew started to perform some work at Park Falls which they completed at 7:00 A.M. At 7:30 A.M. the Crew, in their outfit cars, departed for Minneapolis.

It is the period from 1:30 A.M. to 5:00 A.M. on July 15 while the Claimants were in their outfit cars at Park Falls waiting to perform the work which had been assigned to them at that point, that this claim is made. The Claimants did not spend any "actual time traveling" during this period. Since that is the condition upon which they are entitled to compensation, we find the claim to be without merit.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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 Carrier has not violated the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.