

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

FRUIT GROWERS EXPRESS COMPANY

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

(a) The Express Company violated the Clerks' current Agreement when it failed and refused to properly compensate rest day relief employes for time consumed in actual travel, waiting time, exceeding one hour and thirty minutes, traveling from and to their headquarters to and from the work location, and

(b) Rest Day Relief Clerk W. L. Schooler shall be compensated for the difference between the amount received under Rule 33 and the amount he should have received under Rule 33½(b) for all the time consumed in actual travel, including waiting time from and to his designated headquarters point, Baltimore, Maryland, to and from the work location, Brunswick, Maryland, before and after his regularly assigned hours, from July 14, 1950, to April 29, 1951, inclusive.

EMPLOYEES' STATEMENT OF FACTS: The Forty Hour Week Agreement on this property became effective on September 1, 1949. In order to meet its operational requirements, the Express Company established various relief positions to furnish relief on rest days of assignments in six or seven day service, or combinations thereof, as provided in Rule 23½(e). In order to furnish such relief, it was necessary that some of the positions be assigned to relieve employes at various work locations.

The incumbents of those positions that were required to travel were compensated under the provisions of Rule 33 for necessary, reasonable traveling expenses. This was proper until July 12, 1950, at which time Rule 33½ became effective. After the effective date of Rule 33½, the Carrier continued to compensate such employes for necessary expenses under the provisions of Rule 33 instead of under the provisions of Rule 33½. Because of this violation, the Employes filed claim in behalf of Rest Day Relief Employee W. L. Schooler and others, for the difference due for the time consumed in actual travel and waiting time exceeding one hour and thirty minutes travelling from and to the headquarters point to and from the work location before and after their regular shifts.

For two weeks, Dec. 14-27, 1950, when the regular incumbent at Brunswick was ill, Mr. Schooler was assigned continuously to the work there, covered by another travel rule in this agreement, namely Rule 33. He was fully paid under that rule, but is additionally entitled under this Rule 33½(e) (though no claim for it has been made) to be paid for his travel to and from Brunswick, then the headquarters of the relieved employee. The amount is \$3.91.

Rule 33½(f). The Company will make such relief arrangements so as to have consistent with the requirements of the service and other provisions of this Agreement, a minimum amount of travel and time away from home for the employees involved, and at the request of the General Chairman the Companys Representatives will meet with him to discuss questions that may be raised as to such assignments.

The Company made said relief arrangements so as to have, consistent with the requirements of the service and other provisions of the Agreement, a minimum amount of travel and time away from home for said employee, and the General Chairman never raised any question as to such assignment.

Rule 33½(g). It is understood that this Rule applies only to regular rest day relief assignments and does not change or modify the application of other travel time rules in this Agreement.

This Rule 33½ has been applied herein only to regular rest day relief assignments and not to change or modify the application of other travel time rules in this agreement. See (e) above.

CONCLUSION

For all the reasons given, the Company should be permitted to pay the \$99.00 (\$95.09 and \$3.91), as it is ready and willing and continuingly offers to do, and the claim in all other things should be denied. The Company respectfully requests that the Board so hold.

All relevant argumentative facts and data herein have heretofore been made known to the Brotherhood.

(Exhibits not reproduced).

OPINION OF BOARD: Between July 14, 1950, and April 29, 1951, Claimant Schooler occupied the position of Rest Day Relief Clerk, with headquarters at Baltimore. On Wednesdays, Thursdays and Fridays he worked in Baltimore; on Saturdays and Sundays he worked relief assignments at Brunswick, Maryland; and Mondays and Tuesdays were his rest days.

Claimants hours at Brunswick were from 7:00 A. M. to 4:00 P. M. Brunswick is 87 miles by rail from Baltimore, and to be available at Brunswick at 7:00 A. M. on Saturday it was necessary for Claimant to leave Baltimore by train at 9:00 P. M. on Friday, arriving at Brunswick at 10:59 P. M. of the same day. Thus 1 hour and 59 minutes actual travel time was consumed on the trip to Brunswick. In addition, Claimant was obliged to wait at Brunswick from 10:59 P. M. on Friday until 7:00 A. M. on Saturday for his shift to start. This waiting period consumed an additional 8 hours and 1 minute, or a total of 10 hours from the time Claimant left Baltimore on Friday evening until he started work at Brunswick on Saturday morning.

On Sunday, Claimant's work day at Brunswick ended at 4:00 P. M., but there was no train to Baltimore until 5:40 P. M., arriving there at 7:45 P. M. A total of 3 hours and 45 minutes waiting and travel time was consumed on each trip from Brunswick to Baltimore.

The parties appear to be in agreement that the Carrier is entitled to a credit of 1 hour and 30 minutes as against Claimant's actual travel time of 1 hour and 59 minutes between Baltimore and Brunswick; and that Claimant is entitled to be compensated from the time he finished his assignment at Brunswick at 4:00 P. M. on Sunday until his return to Baltimore at 7:45 P. M., a total of 3 hours and 45 minutes, less 1 hour and 30 minutes, or a net of 2 hours and 15 minutes of compensable time incident to the return trip.

The disagreement is with respect to the period of 8 hours and 1 minute between Claimant's arrival at Brunswick at 10:59 on Friday evening and 7:00 on Saturday morning when he started to work. As to this period the Carrier asserts it has no liability; that it discharged its obligation when it reimbursed Claimant for his meals and lodging; and that this period was neither travel nor waiting time, but merely rest time. On the other hand, the Organization contends that these 8 hour and 1 minute periods constituted waiting time, for which Claimant should be compensated at this pro rata rate.

Disposition of the claim depends upon the construction and application of Rule 33½ of the current Agreement. Subdivision (b) of said rule provides that employes regularly assigned to rest day relief service who are required to travel as a part of their assignment shall be paid travel time if the time consumed in actual travel, including waiting time en route, from the headquarters point to the work location **together with necessary time spent waiting for the employe's shift to start**, exceeds one hour and thirty minutes. In subdivision (d) it is further provided that where an employe is unable to return to his headquarters on any day by reason of his assignment, he shall be reimbursed for lodging, but that accommodations on a sleeper may be furnished in lieu of lodging and that **time spent on a sleeper will not be considered travel**.

The Organization relies on the emphasized part of subdivision (b), while the Carrier leans on that part of subdivision (d) on which emphasis has been placed in this opinion.

We do not consider subdivisions (b) and (d) in conflict or in need of reconciliation. Subdivision (b) appears to be clear and unambiguous. It provides that the employe away from headquarters shall be compensated for time necessarily spent waiting for his shift to start. On the other hand, the part of subdivision (d) on which the Carrier relies merely provides, in effect, that when arrangements are made for an employe who is away from his headquarters to spend the night in a sleeping car instead of a hotel he shall not, by reason thereof, be regarded as traveling. The purpose of this part of the rule appears to be to protect the Carrier from claim by an employe that he is engaged in travel simply because he spends the night in a sleeping car.

The language of the rule is clear and there is nothing for us to construe. We have no authority to re-write the rule.

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 Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claim sustained for the 8 hours and 1 minute waiting time at Brunswick, Maryland.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1953.