

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RR. CO.**

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

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it requires Relief Perishable Freight Inspector E. M. Carroll to drive a company owned pick-up truck outside of, but continuous with the regular assigned hours of his position as a means of transportation, without additional compensation, traveling between Austin, Minnesota and Mason City, Iowa and return in connection with the performance of the duties of Relief Perishable Freight Inspector at the two points.

2. Employee E. M. Carroll shall be compensated for one and one-half hours at the penalty rate of pay, applicable to positions F-159 and F-43, for Thursday and Friday, April 2nd and 3rd, 1953, and all subsequent days when he operated company vehicle used as a means of transporting himself from one work location to the other.

**EMPLOYES' STATEMENT OF FACTS:** Bulletin No. 15 issued March 30, 1953 over the signature of Mr. W. L. Ennis, Assistant to Vice President, reads as follows:

"The following Perishable Freight Inspector's position is open for bids for five (5) working days or until April 6, 1953:

Days	Ass'gn. Hrs.	Pos. No.	Location	Rate of Pay	Lunch Prd.
Sat. & Sun.	7 a.m.- 4 p.m.	F-159	Austin	\$14.3272	1 hr.
Mon.	2 p.m.-11 p.m.	F-452	Austin	\$14.0858	1 hr.
Tues. & Wed.	Rest days				
Thurs. & Fri.	7 a.m.- 4 p.m.	F-43	Mason City	\$14.3272	1 hr.

A brief list of the principal duties of this position includes a sufficient knowledge of the handling of perishable freight as to enable the applicants to properly ice cars, manipulate vents, service heaters, and in addition, unload, feed, water, rest, and reload shipments of livestock in accordance with the federal statutes.

either provide transportation without charge or reimburse the employee for such transportation cost. ("Transportation" means travel by rail, bus or private automobile and "transportation cost" means the established passenger fare or automobile mileage allowance where automobile is used.)"

Since November 5th, 1953, as we have indicated, Claimant Carroll has driven his own automobile for the purpose of performing relief service at Mason City. In connection with the use of his own automobile in transporting himself between Austin and Mason City and as the trips were made to permit arrival within one hour and thirty minutes prior to the starting time of the shift at Mason City, and to permit departure within one hour and thirty minutes after the completion of the shift at Mason City, there would be no allowance due or made employee Carroll for traveling time, the only allowance being made to the claimant was the established auto mileage. Without reasonable train or bus service being available, it was a matter of convenience to the employee to allow him to use the company truck during the period that its full time use was not required at Austin. Certainly, there is no more effort required in driving a one-half ton company pickup truck than in driving an automobile and where there was no more time consumed in doing so, it is the position of the Carrier that the traveling time provisions of the 40 Hour Week Agreement or Decision 6 of the 40 Hour Week Committee could not be so construed as to require payment for time spent in traveling in company truck for the sole purpose of transporting himself when the rules specifically provide no such payment for the time an employee spends in traveling by means of his own automobile.

The automobile mileage allowance as referred to in Rule 38(c) represents the expense which the employee incurs in driving his own car and is in no way payment for time consumed in driving his own automobile. Therefore, where the company pickup truck was used in lieu of private automobile there could be no basis for claim for payment of time consumed in driving the vehicle. In other words, the time consumed in driving the company truck was no different than the time consumed in driving his own automobile and the only payment made when driving his own automobile is mileage allowance representing car expense.

We submit that the Carrier provided "transportation without charge" to Claimant Carroll and as he did not consume—in actual travel, including waiting time enroute—more than one hour and thirty minutes in advance of his starting time nor more than one hour and thirty minutes after the completion of his shift, there is no basis for this claim and it should be declined.

It is affirmed that all data contained herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant E. M. Carroll, Relief Perishable Freight Inspector, in order to fill his assignment drove a company owned pick-up truck between Austin, Minnesota and Mason City, Iowa. His assignment Saturday, Sunday and Monday was at Austin, his headquarters, and on Thursday and Friday of the work week he was at Mason City. These two cities are some 40 miles apart. This claim terminated on November 5, 1953 when such use of the truck was discontinued and Claimant used his own automobile under Rule 46.

Claimant contends that he had to leave Austin at 5:30 A. M. on Thursday in order to arrive at Mason City to fill his assignment at 7:00 A. M., to relieve the regular occupant of Position F-43 at that time. That on completion of his assignment on Friday at 4:00 P. M., he returned to Austin, his next work location, arriving there at 5:30 P. M. The claim for compensation is based on Rules 32(b), Overtime, and 34(c), Notified or Called, of the applicable Agreement.

Respondent Carrier, in support of the position taken, cites Rule 38. Also, that Claimant's predecessors drove their private automobiles originally on this assignment and later drove the pick-up truck and that no claim was made for time consumed while driving their private cars or the pick-up truck. That Rules 32(b) and 34(c) are general overtime rules and Rule 38 is a special rule entitled "Rest Day Relief Travel Time" and is applicable to the instant claim as specifically set forth in the introductory paragraph thereof, "Employees assigned to rest day relief service who are required to travel as a part of their assignment." Cited are Awards 5838, 5942, 6567, 6568, 6400, 6651 and 2304. Also past practice is cited in the method of transportation used by Claimant's predecessors which should control.

Petitioners in dealing with Rule 38 state that the rule defines "transportation" as "travel by rail, bus or private automobile," and further explains "transportation cost" as the "established passenger fare or automobile mileage allowance where automobile is used." Also, it is contended that train and bus service were available, and as Carrier required Claimant to perform the service, i.e., drive the pick-up truck, the time is not "travel time" but is time worked before and after and continuous with his regular work period. Therefore Claimant must be compensated on an overtime basis as required by Rules 32(b) and 34(c). Also, that the pick-up truck is used for the purpose of handling heaters during the winter season, thus the Carrier had a dual service performed, first, for transportation purposes and, second, for service on the property.

The cited rules provide:

"32(b): Except as provided in Rule 29, time in excess of eight (8) hours, exclusive of the meal period, on any day, will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

"34(c): Employees notified or called to perform work, either before or after, but continuous with their regular work period, shall be allowed time and one-half on the minute basis for such time worked."

"38: Employees assigned to rest day relief service who are required to travel as a part of their assignment shall be paid travel time as hereinafter provided:

"(a) The Carrier shall designate a headquarters point for each relief assignment. When the headquarters point is to be changed the position will be re-bulletined in accordance with the provisions of Rule 14(b). The change in headquarters will take effect at the time the assignment is made.

"(b) If the time consumed in actual travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one hour and thirty minutes, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time enroute, necessary to return to his headquarters point or to the next work location exceeds one hour and thirty minutes, then the excess over one hour and thirty minutes in each case shall be paid for as the working time at the straight time rate of the job to which traveled.

"(c) Where an employee is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located, the Carrier will either provide transportation without charge or reimburse the employee for such transportation cost. ('Transportation' means travel by rail,

bus or private automobile and 'transportation cost' means the established passenger fare or automobile mileage allowance where automobile is used.)

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"(f) The Carrier will make such relief assignment 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 Chairmen the Carrier's Representatives will meet to discuss questions that may be raised as to such assignments."

"46(b): Employees will not be required to use automobiles, motorcycles or bicycles in the rendition of service unless furnished and maintained by the Carrier. This is not intended to prevent the use, by an employee, of his automobile in the rendition of service, when properly authorized and compensated to do so."

In a study of the cited rules as the same apply to the factual situation herein, we do not believe the intent of the same can be said to lead to the conclusion reached by the Petitioners and do not think Rules 32(b) and 34(c) abrogate the plain meaning of Rule 38 or that the cited awards help the contentions made. Apparently, the situation presented by these facts may not have been within the contemplation of the parties when Rule 38 was adopted and we do not believe Rules 32(b) and 34(c) were intended to cover such a situation as here presented. We incline to the belief that Carrier was within its rights in declining this claim.

**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

The Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 15th day of April, 1955.