

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

1. When without conference or agreement with the Clerks' Committee, the Carrier denied the employees named below a day's pay at their respective rates of pay for the day they returned to their home terminal on November 26, 1952 from a trip with the supply train, thereby eliminating a practice in effect for twenty-five years or more at the South Tacoma Stores Department, South Tacoma, Washington.

2. That the Carrier shall be required to restore the established practice of allowing employees time off on the day of their arrival on the return trip with the supply train without deduction in pay and reimburse G. U. Gordon and D. A. Hasock, Store Helpers, and R. H. Llewellyn, Store Laborer, for eight hours each at pro rata rate on November 26, 1952.

EMPLOYEES' STATEMENT OF FACTS: Prior to the instant claim, employees returning to their home terminal were not required to report for service on the day of their return but were paid for eight hours on that day at their respective rates of pay. In this case, time slip was made by Supply Storekeeper C. W. Gale (Employees' Exhibit No. 1), and on December 4, 1952, Store Foreman H. Ingham addressed a letter to Mr. C. W. Gale, stating that no time would be allowed, as shown in Employees' Exhibit No. 2.

The claim was then appealed in accordance with procedural rules, up to and including the Chief of Personnel, Mr. H. W. McCauley, the highest official designated by the Railway Company to handle appeals (Employees' Exhibit No. 3). Our appeal was declined by the Chief of Personnel, as shown by Employees' Exhibit No. 4, and a request was then made of the Carrier (Employees' Exhibit No. 5) that this matter be discussed at a mutually convenient time. This request was granted, as shown by Employees' Exhibit No. 6.

The first conference with the Carrier was on April 16, 1953, after which many more were held in an attempt to dispose of the claim on the property.

POSITION OF EMPLOYEES: There is in evidence an agreement bearing effective date of June 1, 1946, as subsequently revised, between the Northern

Inasmuch as the claimants in this docket elected to lay off on November 26, 1952, the day of arrival in Tacoma on the return trip on the supply train, and because of the absence of any rule or practice allowing such employes payment of eight hours on that day under such circumstances this claim should be denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employes, and is made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier maintains a Stores Department at South Tacoma, Washington. It operates a supply train regularly each year to the north, south and east of Tacoma, for the purpose of delivering supplies to local storekeepers and also the Mechanical and Operating departments. For the past 25 years or more, the north and south trips have been operated as a continuous trip with the north end being covered first. Upon arrival at Tacoma from the trip north, the employes tie up at Tacoma and on the following days cover the south end. The supply train returning from the trip south has always arrived in South Tacoma early in the evening, never later than 8:00 P. M. The employes on this trip have been paid for the day of arrival and have reported for work on their regular assignments in the Stores Department the next morning.

On the trip east, for the past 25 years or more, employes have completed their work in Missoula, Montana, 651 miles east of Tacoma. Instead of returning with the supply train, they have been permitted to deadhead from Missoula to Tacoma on Train No. 3, arriving in Tacoma at about 8 A. M., one day in advance of the supply train. They have not reported to work on the day of arrival but have been paid for that day nevertheless, as if they had actually remained on the supply train and returned with it.

The claim before us arises out of a reversal of the usual operation of the north-south trip in 1952. The south end was covered first, then the north end; instead of arriving at Tacoma in the evening as is usual at the end of the north-south trip, the employes were released at Black River, thirty miles north of Tacoma, at 6:30 P. M. on November 25, 1952. Having no transportation, they remained aboard the combination dining car-sleeping car on which they had been traveling in the supply train, and after being switched about the yards, they arrived at South Tacoma passenger station about 4 A. M. on the 26th. They remained aboard, had breakfast aboard at 9 A. M. and then went home, performing no service on that day. Carrier did not allow them time for the 26th and the claim is for a day's pay for three named employes.

The claim is not based upon any Agreement rule but upon the long-standing practice, described above, of allowing employes a day's pay although no work is performed by them for the day upon which they return from the trip east at 8 A. M., one day ahead of the supply train. The contention is that the practice at this location was to pay supply train employes a day's pay for the day of arrival at South Tacoma, and not require them to report for work until the next day, regardless of whether they arrived in the morning or evening. If the arrival happened to be in the morning, as it always was after the trip east, the employes received the benefit of a free day. The claimants here, it is argued, are entitled to the same benefit.

To accept this position would be to broaden the practice far beyond what it actually appears to be. The practice was developed with respect to one particular set of circumstances peculiar to the trip east. The employes on that trip were released from duty 651 miles from home. For their own convenience, they were allowed to leave the supply train and deadhead home on a faster train, which got them into Tacoma a day ahead of the time they would have arrived had they stayed with the supply train. It

does not appear in the record that they were required to leave the supply train; presumably they could have returned on it had they chosen to do so. Under these circumstances, the Carrier paid them and required them to work in the same manner as it would have done had they actually returned with the supply train.

No such practice was developed with reference to the north-south trip for the simple reason that the employees on that trip always returned with the supply train and arrived in the evening. Since they arrived at the end of the working day, they naturally did not report for work until the next day. They were paid for the day of arrival in the usual manner. The reversal of the north-south trip on one occasion, so that the employees arrived with the supply train in the morning rather than the evening, does not afford to those employees the benefit of the practice developed over the years under the particular circumstances of the trip east. Arrival in the morning cannot be said to be the essential element in the development of the practice. Rather, it appears to have been based largely on the fact that the employees arrived home from Missoula a day earlier than the supply train on their own initiative. We see no basis for extending this practice, which developed from a particular set of circumstances, to the substantially different situation in the case at hand.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of October, 1956.