

Award No. 7582
Docket No. MW-7420

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) The Carrier violated the Agreement, when it declined to allow Gas Shovel Helper, E. J. Eaton, compensation for services performed under the provisions of Rule 40 of the effective Agreement on October 29, 1953;

(2) Mr. E. J. Eaton be allowed and paid the minimum pay allowance required by the provisions of Rule 40 account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Shovel Operator Robert C. Bryan and Shovel Helper Edmon J. Eaton are employed in the Carrier's System Work Equipment Sub-department and are furnished with outfit cars S.P.M.W. 551 and S.P.M.W. 2788 which, under Agreement rules, are designated at their home station.

As of October 29, 1953, and for some time prior and subsequent thereto, Messrs. Bryan and Eaton were working in the vicinity of Benson, Arizona, and their outfit cars were located on the back track at that point, together with outfit car S.P.M.W. 145, which was assigned to and occupied by another Carrier employe who was performing other services in the same vicinity.

On October 29, 1953, outfit cars S.P.M.W. 3015 and tool car S.P.M.W. 4070, assigned to certain other employes, were transported by train movement to Benson, Arizona, and the train crew had instructions to also place these cars on the back track.

Upon arrival at Benson at approximately 5:45 P. M., the train crew found that it would be necessary to move outfit cars S.P.M.W. 551, S.P.M.W. 2788, and S.P.M.W. 145 approximately one hundred feet west in order to have room for outfit car S.P.M.W. 3015 and tool car S.P.M.W. 4070.

Inasmuch as the outfit cars already on the back track could not be moved until water hoses were disconnected and steps removed, Mr. Bryan was instructed by members of the train crew to have the cars prepared for the switching movement. Because Mr. Bryan was just recovering from an appendix operation and had not sufficiently recovered so as to permit his

sion, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

Oral hearing is not desired by the carrier unless requested by the petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: The locale of this dispute is near Benson, Arizona. Claimant carried the classification of shovel helper with assigned hours 8:00 A. M. to 4:30 P. M. with an intervening 30-minute lunch period. At the time and place in question claimant occupied one of three outfit cars then situated on a back track. The record indicates that at about 4:40 P. M. on October 29, 1953, a train crew arrived with two other like cars which were to be placed on the same back track that the three aforementioned cars were set up. In order to so set out the two cars then arriving on this track it was determined by the train crew that the three cars would have to be moved to complete the switching operation.

Request was made of one Bryan, shovel operator, to remove the steps and disconnect the water hose from the three cars in order that they might be moved. Mr. Bryan, who was apparently temporarily incapacitated, in turn instructed claimant to make those cars ready for moving.

It is the performance of these duties that forms the basis of claimant's request for payment of a call under Rule 40, which reads as follows:

"Except as otherwise provided in these rules, employees notified or called to perform work not continuous with the regular work period shall be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two (2) hours and forty (40) minutes work or less. If held on duty in excess of two (2) hours and forty (40) minutes, time and one-half shall be allowed on the minute basis."

The petitioner asserted that the work in question was performed according to orders given by the claimant's superior; that the work accomplished was for the carrier's convenience and benefit and was unquestionably performed outside claimant's regularly assigned hours and not continuous therewith.

The respondent took the position that the work in question was for the benefit and convenience of the claimant and was incidental to his occupancy of his car. It was further argued that the rules of the agreement specifically preclude payment for traveling in or preparing outfit cars for travel when such work is done outside of established and regularly assigned hours.

It is clear that the claimant removed the steps and disconnected water hose on three outfit cars as instructed by his superior. It is likewise clear that such work was performed at a time that was neither within nor continuous with the claimant's assigned hours. Part of the work so performed involved cars occupied by other employees than claimant and was in no way incidental to occupancy of the car by the claimant. Thus, on the facts of record, we conclude that the work in question was compensable under Rule 40 of the effective agreement and the instant claim is meritorious.

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 carrier violated the effective agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.