

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it refused to allow Section Foreman E. Sween and Laborers R. H. Morrow and C. B. Coffin payment in accordance with agreement rules for 14½ hours' time in which they were detained from returning to their headquarters between 5:00 P. M. November 25 and 7:30 A. M. November 26, 1952;

(2) Section Foreman E. Sween and Laborers Morrow and Coffin each be allowed 14½ hours' pay at their respective punitive rate in accordance with the provisions of Rule 39.

EMPLOYES' STATEMENT OF FACTS: Section Foreman E. Sween and Section Laborers R. H. Morrow and C. B. Coffin were regularly assigned to and employed on Section No. RC-1, with headquarters at Ashland, Nebraska. They were regularly assigned to work from 8:00 A. M. to 5:00 P. M., excluding a one-hour meal period.

On November 25, 1952, in compliance with instructions issued by proper authority, the aforementioned employes left their headquarters and their assigned territory and traveled fifteen (15) miles by track motor car to the adjoining section territory at Yutan, Nebraska, at which point they assisted the Yutan section crew in loading scrap rail.

Upon completion of their work at Yutan, Foreman Sween and his crew attempted to return to their headquarters at Ashland, but were unable to immediately proceed because of a severe snow storm which precluded the safe operation of the track motor car and because Train No. 83 was scheduled to pass Yutan enroute to Ashland within the next hour.

Consequently, Foreman Sween adopted the safest course possible under the circumstances and decided to withhold departure from Yutan until Train No. 83 had passed that station, with the thought in mind that Train No. 83 would clear the rails of snow and permit a motor car to be safely operated behind the train and that it would be the safest course to have the motor car traveling behind instead of ahead of Train No. 83 under the storm

were working with the regular Yutan section on November 25, and at five o'clock both gangs quit working and the Yutan gang went home. If the Petitioner's contention has any merit, it would seem that the Yutan gang also should claim continuous time, inasmuch as there was no officer there to release them at five o'clock.

However, the claimant foreman in this case admits that he and his gang quit working at 5:00 P. M. on November 25. (See Carrier's Exhibit No. 1.) Also, the Vice General Chairman stated, in Carrier's Exhibit No. 2 that claimants were "tied up at Yutan, Nebraska." The expression "tied-up" as used in railroad circles means only one thing, namely complete cessation of work. The claimants in this case were "tied up"—in other words they quit work and went off duty at the completion of their day's work.

In the light of the clear provisions of Rule 46, and the fact that claimants were released at the completion of their day's work at a point where accommodations can be obtained, and rendered no service whatever after their quitting time, the Carrier respectfully submits that claim for continuous time is completely unsupported by any contractual requirement and must be denied.

* * * * *

The Carrier affirmatively asserts that all of the data herein submitted has been previously submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants, a section foreman and two laborers, were regularly assigned to and employed on Section No. RC-1, from 8 A. M. to 5 P. M. excluding a one hour meal period, with headquarters at Ashland, Nebraska. On November 25, 1952, in compliance with instructions issued by proper authority, claimants left their headquarters and assigned territory and traveled 15 miles by track motor car to the adjoining section territory at Yutan, Nebraska, where they assisted the Yutan section crew in loading scrap rail. The instruction provided that claimants would return to their home section after completing the work of assisting the Yutan crew.

Claimants completed their work at approximately 4:15 P. M. but were detained and did not depart Yutan until some time the next morning arriving by their track motor car at Ashland at 7:30 A. M. for which claim is made for 14½ hours at punitive rate in accordance with the provisions of Rule 39. This claim was initially and finally denied on the basis of Rule 46(c). It is not disputed that Train No. 83 was scheduled to and did pass Yutan enroute to Ashland within an hour after claimants had completed their work at 4:15 P. M. There is also no dispute, under Rule 33(a), that the designated assembling point where claimants' time started and ended was at the tool house in Ashland.

Rules 39(a), (h) and 46(c) read as follows:

"Rule 39. (a) Time preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four hour period computed from starting time of the employee's regular shift. In the application of this paragraph (a) to new employees temporarily brought into the service in emergencies, the starting time of such employees will be considered as of the time that they commence work or are required to report."

"(h) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time

rate except where such work is performed by an employe due to moving from one assignment to another or to from an extra of furloughed list, or where days off are being accumulated under paragraph (g-3) of Rule 32."

"Rule 46. (c) When necessary for men to remain away from headquarters one night or more, they may be released after completion of day's work at points where accommodations can be obtained."

The employes contend that they were not released at 4:15 P. M. of the day in question and there being no accommodations available were held in standby service until they arrived back at their assembling point at 7:30 A. M. the next morning. Also that Rule 46 only applies to travel time and is not controlling. Further that a severe snow storm prevented their departing Yutan either before or after Train No. 83 went through Yutan.

The Carrier contends that their instructions were specific and that after helping the Yutan crew they were to return home. That the employes did not obtain authority for the overtime claimed (Rule 40(b)) and that when their work was completed and they did not return home Rule 46(c) was applicable because there were accommodations at Yutan. Carrier also questioned employes' decision not to flag No. 83 and returned to Ashland. Also that Rule 39 only applies to "time worked".

From the evidence of record we find that because of a severe snow storm it was impossible for claimants to return to their headquarters.

While there is sharp conflict as to whether or not accommodations could have been obtained in Yutan we believe that on the basis of all the evidence it can be resolved in favor of Carrier's contention that there were accommodations.

From the initial denial on the property on November 30, 1952, when Carrier returned claimants' overtime slip, claimants were put on notice that Carrier relied on Rule 46(c). In claimants' ex parte submission dated November 4, 1954 they state "Aware that there were no public hotels or rooming houses located at Yutan and with no indication as to when storm conditions would permit a departure therefrom, claimants went to a nearby store just before it had closed its doors and purchased a few rolls as a substitute for their regular evening meal. The claimants then waited in the depot at Yutan for the storm to subside sufficiently to permit their safe return to Ashland by track motor car." There is no indication that they ever inquired about or sought food and lodging which we interpret to be the required accommodations as mentioned in Rule 46(c).

In the Carrier's submission there are identified by specific names one rooming house three blocks from the depot and three eating establishments within one block of the depot. At the oral argument May 10, 1955 employes state: "The population of Yutan, Nebraska, as shown by the official 1950 census figures was exactly 287 inhabitants. That figure, of course, includes men, women and children. This Board should readily visualize the absence of public lodging accommodations in a community of that size". In employes' reply to Carrier's oral statement they stated that on May 3, 1955 their Local Chairman and Vice Chairman went to Yutan and found no cafes in operation in Yutan. They learned that there were three beer taverns there which served lunches; that it was years since Yutan had a place which served regular meals. They were also advised that George Schultz did rent rooms but not to a transient trade as a rule. That taverns and stores closed early that night and some people were even sleeping on the floor in Schultz's. This information was developed almost two and one half years after the claim date and does not indicate the source.

These statements, in addition to claimants unexplained omission to use the company telephone in the depot, where they stayed overnight as well

as their failure to flag No. 83 cannot convince us that any sincere effort was made by the claimants to obtain the accommodations available in Yutan. Whatever their reasons for staying all night at the depot, once they did not flag down No. 83 Rule 46(c) became operative.

Rule 46(c) is a special rule and an exception to Rules 33 and 39. This Board has enunciated the sound doctrine that special rules prevail over general rules leaving the latter to operate in the field not covered by the former. We must hold, therefore, that Rules 33 and 39 were not controlling here.

On the basis of all facts of record we find that the employees tied up and were released from service at 5:30 P.M. on November 25, 1952; that they performed no service after that time and are entitled to 30 minutes at punitive rate from 5:00 P.M. to 5:30 P.M. and to be reimbursed for cost of meals and lodgings pursuant to Rule 47.

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 violated to the extent indicated in the above Opinion.

AWARD

Claim sustained to the extent indicated in the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.