

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the effective Agreement when it compensated Bridge and Building Mechanics H. E. Phillips, W. R. Sprenger and Ralph Cunningham at straight time rate instead of at time and one-half rate for three and three-quarters ($3\frac{3}{4}$) hours of work performed in going to and from their headquarters and point of work on February 23, 1953;

(2) Each of the claimants identified in part (1) of this claim be allowed three and three-quarters ($3\frac{3}{4}$) hours additional pay at half-time rate because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly employed as Bridge and Building Mechanics, under the supervision of Bridge and Building Foreman C. H. Watson, with headquarters at Parsons, Kansas.

Inasmuch as Washington's Birthday, February 22, 1953, one of the seven designated holidays, fell on a Sunday, Monday, February 23, 1953 was observed as a holiday within the meaning and intent of the agreement rules.

On Monday, February 23, 1953 Bridge and Building Foreman Watson was notified that a bridge in the vicinity of Parker, Kansas had been damaged in a derailment. Foreman Watson in turn called the claimants as well as B & B Mechanic Wayne Russell to report at their designated assembling point at 7:00 A.M. Upon arrival, they were instructed to load the necessary tools and materials (lumber) in a truck. They completed this work at 7:15 A.M., at which time they departed from their headquarters; claimants Phillips and Spencer riding with Foreman Watson in his automobile; claimant Cunningham riding in the truck with the driver, B & B Mechanic Russell. They consumed $1\frac{3}{4}$ hours in going to Parker, 4 hours in repairing the Bridge, and 2 hours in returning to their headquarters at Parsons, working a total of 8 hours.

point of work and return **IS NOT WORK** but is travel time, payment for which at straight time rate of pay is directed by Rule 2, Article 12, which special rule specifically covering payment for travel time is applicable; takes precedence over all other rules of the agreement, and controls the circumstances and payment to be made the claimants.

Inasmuch as the claim alleged is for "work" and travel time **IS NOT WORK**, the employees performed no "work" during the period for which claim is made. The facts, therefore, do not support the claim for "work"; and the agreement which provides for payment for travel time under Rule 2, Article 12, at straight time rate of pay, does not support the claim for time and one-half.

All data submitted herein in support of the Carrier's Position have been heretofore submitted to the employees or their duly authorized representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in the Brotherhood of Maintenance of Way Employees', System Committee's and Employees' submission and all pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, expressly deny each and every, all and singular, the allegations of claim and ex parte submission of the Brotherhood of Maintenance of Way Employees, System Committee of the Brotherhood, and the Employees.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies, and each of them, such other relief to which it or they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimants were ordered to report for work at 7:00 A.M. on Monday, February 23, 1953, which was Washington's Birthday and one of seven legal holidays recognized as such under the effective agreement of September 1, 1949 (Art. 8). Claimants reported for work at 7:00 A.M., at the regular reporting point, and worked until 7:15 A.M., loading materials and tools on a truck. Travel to the site of the repair job took one hour and forty-five minutes. From the time of arrival until 12:40 P.M., the men worked at the site; from 12:40 P.M. until 1 P.M. was the lunch period. A period of two hours—1 P.M. to 3:00 P.M.—was spent traveling from the repair site back to the reporting point.

Claimants were paid for 4 hours and 15 minutes at the time and one-half rate under the provisions of Rule 1, Article 8 of the Agreement, and for 3 hours and 45 minutes at the straight time rate for travel time under the provisions of Rule 2, Article 12, of the Agreement.

Claim was filed on the property for three and three-quarters (3¾) additional pay at half-time rate on the premise that travel time should have been paid at the time and one-half rate. The claim was properly progressed on the property and was declined by the Carrier on June 29, 1953.

Employees gave Notice of Intent to file an ex parte submission with this Division on October 18, 1955.

Before proceeding to a consideration of the merits of this dispute it is necessary to dispose of Carrier's objection that this is a stale claim and that it should be dismissed because of alleged unreasonable delay in prosecuting the appeal to this Division.

As a defense Employees rely on the National Agreement of August 21, 1954, and more specifically Article 5, Section 2, the pertinent part of which is as follows:

"* * * except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of the rule, a period of 12 months will be allowed after the effective date (January 1, 1955) of this rule for an appeal to be taken to the appropriate board of adjustment * * *."

The record here discloses that this claim was filed within the time limitation agreed to by the parties in the foregoing Agreement. We, therefore, find and hold that the claim is properly before this Division.

The sole issue in this case is what constitutes the proper rate of pay for travel time under the effective Agreement.

Employees rely on Rule 4, Article 7, "Hours of Service", Rule 1, Article 8, "Holidays", and Rule 1, Article 11, "Calls", as requiring payment of time and one-half for time consumed in traveling to and from the repair site.

Carrier insists that Rule 2 of Article 12, "Travel Time", is the applicable rule and that Claimants have been properly compensated under that rule. It also cites this Division's Award 6651, involving the same parties and issue, as controlling.

After thorough study of all the evidence of record, as well as the awards cited to us by both parties, we have reached the conclusion that the Carrier's position is sound and that this claim must be denied.

Award 6651 held, and properly so, that Rule 2 of Article 12 was the controlling rule as a specific contract provision designed to meet a particular situation, i.e., the rate of pay that the parties agreed would be applicable to time spent in traveling to and from the work sites. As such, Rule 2 prevails over those rules relied on by the Employees under established and accepted principles governing the interpretation and construction of contracts.

Under the provisions of Rule 2 of Article 12, we find and hold that Claimants have been properly compensated and that the Agreement was not violated.

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 16th day of September, 1958.