Award No. 9263

Docket No. MW-8275

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)

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

(1) The Carrier violated the effective agreement when it refused to compensate B&B Employes J. A. Comeaux and Major Devance at their respective time and one-half rates of pay for work performed in going to and from their home station to point of work on Sunday, June 28, 1953;

(2) Each of the claimants referred to in Part (1) of this claim be allowed the difference between what they were paid at their respective straight time rates of pay and what they should have been paid at their respective time and one-half rates of pay for services referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants were regularly assigned to one of the Carrier's Bridge and Building gangs, with headquarters or home station at Lafayette, Louisiana. They were regularly assigned to a forty hour work week, consisting of five days, eight hours' each, Monday through Friday, with Saturdays and Sundays as designated rest days.

At 11:00 A. M. on Sunday, June 28, 1953 the claimants were called and directed to report to the B&B shop and to assist other employes (welders) in making emergency repairs at another location. Upon arrival at the B&B shop, the claimants assisted in the loading of a welding device and the necessary tools in a motor truck, whereupon they departed for the work location. They consumed four hours and thirty minutes in going to and from their home station (Lafayette) and point of work for which service they were compensated at their respective straight time rates of pay.

Consequently, claim was filed in behalf of the claimants requesting that each be allowed the difference between what they were paid at their respective straight time rates of pay and what they should have received at

5. No rule in the MofW Agreement or any other agreement on the T&NO provides pay for traveling at the time and one-half rate under the circumstances involved herein, and an award sustaining the claim in the instant case would have the effect of writing a provision into the agreement that has not been negotiated or agreed to by the parties. The Board has consistently said that it will not write rules in the guise of an interpretation.

The substance of all data and argument included in this submission has been made known to the employes' representative in handling this case on the property, either by correspondence or in conference.

OPINION OF BOARD: Claim is made for compensation for overtime on behalf of J. A. Comeaux, a helper and Major Devance, a laborer, assigned to a B&B gang of the Carrier at Lafayette, Louisiana, hereinafter referred to as Claimants.

Claimants were called out to make emergency repairs on a bridge at Bouef, Louisiana, on Sunday, their rest day. They reported at 11:00 A. M. One hour was taken in loading a Company truck with equipment. The gang then proceeded to the bridge with Claimants as passengers. They worked on the bridge for three hours. The trip to and from the bridge consumed four hours. They were paid at the rate of time and one-half for the time worked on the bridge and loading the truck and at pro rata rate for the four hours required to make the trip to and from the bridge. Claimants assert that they should be paid at the rate of time and one-half for the time consumed in making the trips to and from the bridge. The facts are not in dispute.

The Claim is based on the specific statement therein "for work performed in going to and from their home station to point of work on Sunday."

It will be noted that the travel was by Company truck and not by train.

The Carrier relies upon Rule 9, Article XV of the applicable Agreement.

Claimants contend that Rule 9, is not intended to have application to the type of transportation here involved but to meet a situation where employes would be traveling by train and would, of necessity, be required to wait for its arrival. Thus, the provision in Rule 9 "Travel or waiting time during the recobnized overtime hours at home station" has no appilcation to the facts in this Claim.

Carrier insists that the Rule 9 is clear and can have but one meaning, namley, that straight time only required to be paid when employes are traveling in the service of the Carrier, to and from their work, without respect to the means o ftravel. It says that the rule is a special provision covering travel and must control over the rules relied upon by the Claimants which are general in import. Claimants invoke the same principle and contend that Rule 9, is found in Article XV, which is captioned "General Rules" and that the rules upon which they rely are special in nature. Another well recognized rule of construction of contracts is that all parts of an agreement shall be, if possible, reconciled.

Claimants assert that the well established practice of the Carrier recognizes that their contention in this Claim is sound.

As evidence of the practice of the Carrier, Claimants submit sixty five

letters from long time employes of the Carrier, mostly Foremen, two of whom were stationed at Lafayette, Louisiana. These employes say that during all the years of their employment they and the Foremen and their crews have been paid time and one-half for overtime for trips to and from the site of their work when transported other than by train. This is indeed an impressive array of proof as to the practice of the Carrier as to payment for overtime which might be classified generally as travel time.

If practice is material to the construction of Rule 9, it has been well established and conforms to the interpretation maintained by the Claimants. We believe that it is material and value in determining the meaning of the Travel Rule.

Claimants rely on Rule 1, Article X of the controlling Agreement:

> "Except as otherwise provided herein, employes who are required to work on their assigned rest days * * * shall be compensated therefore in accordance with the provisions of the Call Rule."

Rule 4, Article IX, is the Call Rule:

> "Employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of four hours for two hours and forty minutes of work or less. If held on duty in excess of two hours and forty minutes, time and one-half will be allowed on the minute basis."

The word "work" is the decisive word in this submission. Claimants insist that the service which they performed in riding from Lafayette to the bridge and return was, under the circumstances, work performed within contemplation of the foregoing rules.

Rule 9, Article XV, on which the Carrier relies provides:

> "Except as provided by Rules 7 and 8 of this Article, Bridge and Building Foremen and Mechanics and their Helpers * * * who are required by the direction of the management to leave their home station will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. **Travel or waiting time** during the recognized overtime hours at home station will be paid for at the pro rata rate." (Emphasis ours)

It is the last sentence of the foregoing rule which the Carrier claims must control this Award.

Rules 7 and 8 are not applicable to the facts in this case.

Notwithstanding the universality of Rule 9 in working Agreements between Carrier and the Organization here involved, it is in this particular Agreement a contract between the immediate parties and must be interpreted in the light of their construction of the Rule. Discernment of intent may be assisted, if the rule is susceptible of more than one meaning, by recourse to the construction which the parties by conduct have placed upon it.

It is asserted and established by the letters to which reference has heretofore been made, that it has been the almost uniform practice of the Carrier to make compensation for overtime at the rate of time and one-half for the periods during which maintenance of way employes were traveling to and from their work.

In October, 1949, in Award 4581, Carter, Referee, claim was made for compensation for a water helper for pay at the rate of time and one-half for overtime consumed in travel by a company-owned bus. The defense of the Carrier was that Rule 6 (c) of the controlling Agreement, the same as Rule 9 here, controlled the dispute.

The opinion in Award 4581 took cognizance of the issue, referred to the long time practice of the Carrier to pay for overtime when the travel was by track motor car, notwithstanding Rule 6 (c) and then said:

> "It cannot be questioned that the language used in the two quoted rules is in conflict. We shall harmonize these apparent conflicts by applying the rules in the manner that the past conduct of the parties indicates their meaning to be. It is not disputed that water service employes when traveling by motor car were paid time and one-half for traveling in overtime hours. When trucks were employed to supersede motor cars as a means of transporting these employes, it did not have the effect of changing their existing hours of service or rates of pay. This is in accord with the interpretation given when section laborers were transported by bus in lieu of motor cars. The Carrier then interpreted the rules to mean: 'The time required to go from headquarters to point of work and return from point of work to headquarters will be paid for as time worked.' In the case of section laborers, the travel by bus was held to be in lieu of travel by motor car and called for the application of the same rules in like manner as before. In the case of this Claimant, the travel by truck was in lieu of travel by motor car and required the application of the same rules in like manner as before. Claimant was therefore entitled to pay for the travel time here involved as time worked in excess of eight hours."

Justice Holmes once said words are flexible in that they do not always mean the same thing. So the word "work is a flexible term and may be employed with different connotations. It is common knowledge that some empolyes who are required to travel from their base of operations to the site of their manual or professional service consider that their work begins when they leave their base. That this has been the conception of "work" by the Carrier as well as its employes in the rules under consideration is well established. It is not at all probable that the Carrier, throughout the many years covered by the letters of its employes, acted under a misapprehension of the meaning of Rule 9 or of the facts, when they made payment as here requested by Claimants.

The use of the language "Travel or waiting time" as employed in Rule 9, is consonant with the construction that it referred to train travel instead of other modes of travel. It is not probable that there would be any considerable waiting time when travel was made by truck or motor car. The transition from motor car to bus or automobile for transportation of employes was normal and in the exercise of sound managerial practice.

We hold that under the facts here appearing the language of Rule 9 referring to "Travel" was intended to be restricted on the lines of this Carrier to travel by train. In this situation the payment to Claimants should have been made under the rules which they invoke.

Our conclusion is suported by Awards 4581 and 4850, Carter, Referee, and 6668, Robertson, Referee.

We are not unmindful of Awards 6651, Rader, Referee, and 8457, Coburn, Referee, a late award, which support the contention of the Carrier here, and may not be reconciled with the instant Award. We do not comment on these Awards except to say that we believe the opinion in Award 4581, from which we have quoted, is sound. Both opinions in Awards 6651 and 8457, are short and neither discusses or gives any consideration to Award 4581.

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 Employes involved in this dispute are respectively *Carrier and Employes 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 has been violated.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1960.