

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed and refused to compensate B&B Foreman Thompson and the members of his crew in accordance with the provisions of Rule 21(a) for all time worked and/or held on duty from 12:01 A. M. on April 2, 1955 to 12:00 Noon on April 2, 1955.

(2) B&B Foreman Thompson and each member of his crew be allowed additional payments as follows because of the violation referred to in Part one (1) of this claim:

(a) The difference between what each should have been paid at time and one-half rate and what each were paid at straight time rate for the one hour each worked and/or was held on duty between 3:30 A. M. and 4:30 A. M. on April 2, 1955.

(b) The difference between what each should have been paid at time and one-half rate and what each were paid at half-time rate for the half-hour each worked and/or was held on duty between 5:30 A. M. and 6:00 A. M. on April 2, 1955.

(c) Three hours pay at time and one-half rate for the three hours for which they received no compensation whatsoever for the three hours each worked and/or was held on duty between 6:00 A. M. and 9:00 A. M. on April 2, 1955.

EMPLOYES' STATEMENT OF FACTS: Bridge and Building gang in charge of Foreman K. C. Thompson is regularly assigned to a work week of Monday through Friday, with assigned Rest Days of Saturday and Sunday. On Friday, April 1, 1955, at 5:00 P. M., Foreman Thompson and his gang were released from duty to go to their respective homes for the week-end. Their camp cars (headquarters) were located at Searsboro, Iowa. Their respective homes were in the vicinity of Oskaloosa, Iowa.

We quote from the Opinion of the Board in Award 6651 as follows:

"In the Agreement under consideration a specific rule appears, Article 12, which deals with the matter here in controversy, "Travel Time," which we deem to control in the instant case and it provides for the method of payment made by Carrier to Claimants. It is the general rule in construing of all contracts that a specific provision dealing with a certain condition will prevail over other rules dealing with certain phases of the situation in a general manner and relating to overall matters which may arise. Under the provisions of Article 12 proper compensation was paid and we find no violation of the agreement."

Carrier contends that claimants were properly compensated under the terms of Agreement and that the instant claims are without merit.

On the basis of all the facts and the evidence submitted herein, Carrier respectfully requests that your Honorable Board deny, in their entirety, the claims submitted.

All data in support of Carrier's Position has been presented to the representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts upon which the instant claim is based, are not in dispute.

Claimants held regular assignment in a Bridge and Building gang Monday through Friday of each week with assigned Rest Days — Saturday and Sunday. Their headquarters at time of occurrence were camp cars at Searsboro, Iowa.

On Friday April 1, 1955, Bridge #110 located at Sheffield, Iowa, was damaged by a derailment. At 8:30 P. M. that evening B&B Foreman Thompson and eight B&B Carpenters were called to load the materials which would be needed to repair the damaged bridge. These men continued to perform this service past midnight until 3:30 A. M. on the morning of April 2, 1955. They were paid at the rate of time and one-half under Rule 23 of the Agreement, this payment is not involved in the instant dispute. For the next hour, 3:30 A. M. to 4:30 A. M., they rode the work train from Oskaloosa to Searsboro. The Carrier paid one hour at the pro rata rate for this travel time, claiming that they should be paid for this travel time under Rule 33(b). Between 4:30 A. M. and 5:30 A. M. they were loading materials into their outfit car; and were paid at the time and one-half rate. Between the hours of 5:30 A. M. to 9:00 A. M. Claimants were traveling in the work train Searsboro to Sheffield, Iowa, where the bridge was to be repaired, and on arrival immediately went to work, the Carrier allowed a half-hour pay (between 5:30 and 6:00 A. M.) at half rate for this travelling, claiming that Rule 33(a) applied. From 9:00 A. M. to 12:00 Noon they repaired the bridge and were paid at the time and one-half rate for such service.

A claim was thereafter instituted on the property Claimants contending that they were entitled to be paid at the rate of time and one-half between 12:01 A. M. and 12:00 Noon on April 2, 1955, one of their regularly assigned rest days, in accordance with Rules 21 and 23.

The Carrier contends that the Claimants were compensated under Rule 33, "Travel time", that they were properly paid, and the claim should be denied.

We cannot agree with the contention of the Carrier, these Claimants were called at 12:01 A. M. for work brought about by a derailment, then were held

on duty from 12:01 A. M. until Noon on April 2, it was a continuing assignment, they were never released at any time or place until the Noon of April 2, 1955.

We quote Rule 23:

"RULE 23

Calls

"Except as otherwise provided in this agreement, employes notified or called to perform work not continuous with the regular work period, will 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, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on minute basis."

* * * * *

"Rule 21

Rest Day and Holiday Work

"(a) Except as otherwise provided in this rule, employes who are required to work or held on duty on their assigned rest days and the following holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that when any of the above holidays fall on Sunday, the day observed by the State or Nation or by Proclamation shall be considered the holiday) shall be paid at the rate of time and one-half for time worked or held on duty, with a minimum of two (2) hours and forty (40) minutes as per Rule 23."

Rule 23 — makes no exception for interim travel, it pays for all time consumed on the call at the rate of time and one-half; it specifically provides for all time "held on duty in excess of two hours and forty minutes." The claim must be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1962.