

Award No. 11564
Docket No. MW-10770

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, 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 Agreement when it failed and refused to allow Messrs. C. T. Hatfield and F. L. Rhymes travel time pay for September 28 and 29, 1957 while said employees were enroute from Denison, Texas to Smithville, Texas.

(2) Messrs. C. T. Hatfield and F. L. Rhymes can be allowed sixteen hours' pay at their respective straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant employees are both assigned to a System Pile Driver crew and are assigned camp cars on which to board and lodge.

The Claimant employees are assigned to a work week of Mondays through Fridays.

On Friday, September 27, 1957, the Claimant employees were engaged in a work project at Denison, Texas. On that same date, a bridge near Smithville, Texas was severely damaged and/or destroyed as a result of a train derailment.

Consequently, the Claimants were instructed to proceed to Smithville, which is approximately 437 miles from Denison, for the purpose of assisting in the rebuilding of the bridge.

After completing their tour of duty at Denison, Texas on Friday, September 27, 1957, the Claimants' boarding cars were switched out and placed in a "through freight" so as to expedite their transfer to Smithville.

The Claimants, having no other means of transportation (not even in-

fore submitted to the Employees or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

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 they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants C. T. Hatfield and F. L. Rhymes, were members of a System Pile Driver Gang located at Denison, Texas, with assigned camp cars. The assigned workweek was Mondays through Fridays. At the close of work on Friday, September 27, 1957, the crew was informed that the outfit would be moved to Smithville, Texas, some 437 miles, and that Monday morning, they were to report for work at Smithville. The Claimants allege that because the Company was required to furnish transportation, and offered no other transportation, they were required to ride the camp cars to Smithville, thus qualifying for sixteen (16) hours pay at straight time rates, pursuant to Article 12, Rule 1 of the Agreement.

Article 12, Rule 1 of the Agreement, reads as follows:

"Article 12. Travel Time.

"Rule 1. Employees required by the management to travel on or off their assigned territory in boarding cars will be allowed straight time traveling during regular working hours, and for rest days and holidays during hours established for work periods on other days."

The presentation to the Board included twenty-three previous awards put forth by the parties as precedents, in addition to oral argument, and numerous awards cited in the ex-parte submission. The Carrier disputed the claims on two grounds:

1. That the claim was not submitted to the Board within nine (9) months time limit for submission of disputes to the Board;
2. That the Claimants do not qualify for compensation under the quoted rule, in that they were not **required** to ride the camp cars used for transportation.

The question of what constitutes a timely submission has been before this Board many times. The August 21, 1954 Agreement provides a limit of nine (9) months for submission of disputes to the appropriate division of the National Railroad Adjustment Board, and reads, in part, as follows:

" * * * All claims or grievances involved in a decision by the highest designated officer, shall be barred unless within nine (9)

months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board
* * * ,"

Within said nine months limitation, the Organization on August 21, 1958, notified the Board of the claim, by letter, setting out the names of the Claimants, dates of claim, and the nature of the claim, indicating that the ex-parte submission would be filed within thirty days, as is required pursuant to Circular No. 1 (October 10, 1934) rules of procedure of the Board. This has been the practice for ex-parte submissions for a great number of years, sustained by Awards 10500, 9059, and many others.

There is no dispute that Claimants were members of the System Pile Driver Crew and that their work site was changed at the end of the work-week from Denison to Smithville, over four hundred miles. The Claimants allege, and it is not denied, that the transportation was the responsibility of the Carrier. The claim, however, is not for transportation expense, and that issue is not before us. The Rule, Article 12, Rule 1, requires that straight time compensation be paid when employes are required to travel in Camp Cars. The record does not contain a showing that such travel was required of the Claimants. Claimants contend that the camp car travel requirements must be imputed, from the fact that travel was necessary, the camp cars were being moved, and no other transportation was arranged. Such a finding would require this Board to make a new rule, that where transportation was necessary and pass transportation, or money for public transportation was not tendered, employes were required to ride their equipment to new locations. This Board is not empowered to write rules, and the contention cannot be maintained. The Claimants chose to ride the camp cars on their free days, and have made no showing that they demanded transportation from the Carrier, which demand was refused.

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 was not violated.

AWARD

Claims denied in accord with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.