

Award No. 11570

Docket No. MW-10774

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it required B&B Foreman J. E. Boardman and the members of his crew to travel with their boarding cars from Davenport, Iowa, to Elgin, Illinois during the hours from 1:00 A.M. to 6:00 A.M. on September 6, 1957 and failed and refused to compensate them for the time so consumed.

(2) B&B Foreman J. E. Boardman and the members of his crew each be allowed five hours' pay at their respective half time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On September 5 and 6, 1957, the Carrier required B&B Foreman J. E. Boardman and the members of his crew to travel with their boarding cars from Davenport, Iowa, to Elgin, Illinois after work period hours.

The cars were picked up at Davenport, Iowa, by train No. 98 at 8:50 P.M. on September 5, 1957 and arrived at Savanna, Illinois, at 12:20 A.M. on September 6, 1957 and were placed on track No. 20 at 1:00 A.M.

During the interval from 1:00 A.M. to 9:30 A.M. on September 6, 1957, the boarding cars were moved two or three times in switch movements and, at 9:30 A.M., the cars departed Savannah on train No. 72 for Elgin, their destination.

The claimants were allowed payment for three hours at their respective half time rates for the period 10:00 P.M. on September 5 to 1:00 A.M. on September 6, 1957.

The Carrier has refused to allow the claimants payment at their respective half time rates for the period from 1:00 A.M. to 6:00 A.M. on September 6, 1957.

OPINION OF BOARD: There are three issues involved. The claim involves Foreman J. E. Boardman and the members of his crew for the time from 1:00 A. M. until 6:00 A. M., while traveling in boarding cars from Davenport, Iowa, to Elgin, Illinois, at their respective half time rates. The claim involves an interpretation of Rule 26 entitled Travel Time.

"RULE 26 (a)

"Employees required by the Management to travel on or off their assigned territory with 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. When traveling with boarding cars after work period hours, the only time allowed will be for actual time traveling after 10 P. M. and before 6 A. M., and at half time rate."

The Claimants, in their boarding car, were picked up at 8:50 P. M. and arrived at Savanna on Train No. 72 about 1:00 A. M. The boarding car was switched out and remained at Savanna until 9:30 A. M. the next day, when it departed for the destination. Claimants were paid 3 hours at half time rate from 10:00 P. M. until 1:00 A. M. The Carrier declined payment from 1:00 A. M. until 6:00 A. M., a period of 5 hours, at half time rate, pursuant to Rule 26.

The Carrier contends that the claim is barred under Article V, Section 1 (c) of the August 21, 1954 Agreement, in that the claim was declined on January 15, 1958 and that no submission was made to the Adjustment Board within 9 months of such declination, as is required. The question of what constitutes a timely submission has been before this Board many times, and before this referee in Award No. 11564.

The Carrier next questions if there has been a timely appeal, alleging that a period of more than 60 days, from September 19, 1957, the date of the declination by the Carrier's Chief Carpenter, Collings. In this regard it must be noted that the time claim was first submitted in due course on September 6. On September 9th in a letter to the disbursement officer, the Chief Carpenter instructed that the claim not be honored, and sent a copy of the communication to the Claimant, Foreman Boardman. There were subsequent letters of claim on September 23, answered on September 26, a General Chairman's letter on October 24, and answered November 26th. Subsequently there was an appeal on November 29th to the Superintendent, who declined the claim on December 2nd. And finally, on December 5th, an appeal to the highest officer, Vice President C. P. Downing. During this handling no question of the 60 day time limit rule was raised. On January 15th, 1958, however, Vice President C. P. Downing declined the claim and raised the time limit rule. It is felt that this is a matter of procedure, which could not be raised at this late date. On November 29th the matter was appealed to the Superintendent. The Superintendent did not raise the issue, and declined the claim on December 2nd. The denial of December 2nd constituted a waiver of any lack of regularity in regard to the 60 day limit.

It is now necessary to consider the claim on the merits. Rule 26 provides payment at half time rates for traveling between 10:00 P. M. and 6:00 A. M. During the period of the claim, from 1:00 A. M. to 6:00 A. M., the Claimants were stopped enroute to their destination. The question is squarely, does this constitute traveling. Award No. 2810 of this Division, which award was issued September 24, 1943, concerns a similar period of waiting, which occurred dur-

ing duty hours. Award No. 2310 sustained the claim that payment for such a waiting period was warranted. While the instant claim concerns a waiting period which occurred during non-duty hours, and between 10:00 P.M. and 6:00 A.M., it would seem that a like sustaining award is warranted. The language of Rule 26 is somewhat confusing. The second sentence of paragraph (a) of Rule 26 used the terminology "actual time traveling after 10 P.M." Carrier argues that traveling does not include waiting, as here involved, during off duty hours. The language of the Rule need not be so construed, as the meaning of the words themselves must be interpreted from the entire paragraph. The better interpretation of the words used, namely, the word traveling, is that it means the entire time consumed going from point of origin to point of destination. Award No. 6197, Referee Thomas Begley, an arbitrator of vast experience, participating, denied a claim involving a waiting period, but the Rule was a considerably different Rule. The Rule in Award No. 6197 had a definite provision that payment would be made during working hours for both travel time and waiting time, thus making a distinction between travel time and waiting time. The Rule here, in providing for payment for non-working time, did not make this distinction, indicating that waiting time was not to be segregated. Award No. 6065 denied a claim for a waiting period, but the waiting period was at the end of the travel, at the point of destination, before the Claimants commenced work. It thus appears that the Claimants were traveling within the meaning of Rule 26 (a) and should be compensated. It is the opinion of the Board that Claimants should be paid at half time rate for the period from 1:00 A.M. to 6:00 A.M., September 6, 1957.

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.

AWARD

Claim sustained.

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.

**CARRIER MEMBERS' DISSENT TO AWARD 11570,
DOCKET MW-10774**

WE DISSENT!!

W. M. Roberts

G. L. Naylor

R. E. Black

W. F. Euker

R. A. DeRossett