Award No. 12222
Docket No. MW-11464

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it compensated employes on Section No. 51 and on Floating Gangs Nos. 1 and 2 at the straight time rate instead of at the time and one-half rate for time consumed during overtime hours in going to and from their headquarters and point of work during the period from January 6, 1958 through January 22, 1958.

(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 and what they should have been paid at their respective time and one-half rates for the services referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: During the period from January 6 through January 22, 1958, the claimants, who were regularly employed on either Section No. 51 or Floating Gangs Nos. 1 or 2, were engaged in removing track on the Eastern Mesaba Branch of the Carrier's Iron Range Division.

On each assigned workday during this period, the claimants were required by the Carrier to go from and to their respective designated assembling point or headquarters and work site via Carrier-owned buses or trucks during hours in advance of and following their regularly assigned eight hour work period. For service thus performed, the claimants were paid at their respective straight time rates of pay.

The Employes have contended and continue to contend that this time consumed by the claimants in going from and to their respective assembling point or headquarters and work site during overtime hours is time worked and should have been paid for at the time and one-half rates of pay.

The claim was declined as well as all subsequent appeals.

basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period, computed from the starting time of the employe's regular shift. Employes working continuously into their next regular shift will be paid their regular rates unless the continuation of service is performed on the work for which penalty rates were paid, in which case the double time rate will continue to accrue until relieved or until returned to the regular assignment."

Rule 16 specifically provides how employes will be paid for time worked during recognized overtime hours as stipulated therein. Rule 16 excludes travel time payment from its provisions. Rule 24 specifically provides how employes will be paid travel time. The inclusion of separate and distinct specific rules in the agreement, one covering the method of payment for time worked and the other covering the method of payment for travel time, shows without a doubt that the parties are agreed that time worked and travel time are not one and the same thing or synonymous. It is clear that travel time does not come under the provisions of the Overtime or Hours of Service Rules. If travel time was one and the same thing or synonymous there would be no need for travel rules or separate and distinct travel time and time worked during the recognized overtime hours.

The interpretation of the agreement rules which the Employes are attempting to apply and establish would, if sustained, be the equivalent to change the interpretation placed on such rules for approximately 21 years and rewrite such rules which your Board has held many times that such must be done only by conference and negotiations between the parties themselves and not by unilateral action of either party or by the Board.

CONCLUSION

In conclusion, the Carrier asserts that:

1. The agreement rules do not provide payment of time and one-half to employes transported by Company bus or "Carry All".

2. Company did not change starting time of the claimants.

3. Claimants were properly paid at the pro rata rate for time spent while transported by Company bus or "Carry All".

4. The agreement rules were not violated.

In light of all facts and circumstances, the claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is whether Claimants are entitled to pay at the overtime rate instead of pro rata rate for the time they were transported from their headquarters and their point of work and return. They were transported by Carrier owned bus and "Carry All".

Rule 24 (a) reads as follows:

"Employes who are required by direction of the Company to leave their home station will be allowed actual time for traveling or waiting during regular working hours. All hours worked will be

paid for in accordance with practice at home station. Travel by passenger train, other public conveyance, or as passengers in automobiles, or waiting time during the recognized overtime hours at home station, will be paid for at the pro rata rate. If, during the time on the road, a man is relieved from duty and is permitted to go to bed for five (5) hours or more, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station."

Rule 16 (a), in part, reads:

"(a) Except as provided in Paragraph (e) of this rule, Rule 22, Meal Periods, and Rule 24, Travel Time, time worked preceding or following and continuous with the regular eight (8) hour work period shall be computed on the actual minute basis and paid for at the time and one-half rates . . ."

Rule 24 is excepted from the time and one-half penalty pay for travel to and from an employe's point of work. It is evident that the parties negotiated special pay conditions for such travel time. If that had not been the intention of the parties there would have been no need for Rule 24 and Rule 16 (a) would not have contained such an exception. We need then to examine the language of Rule 24 (a).

Rule 24 (a) clearly and unmistakably states that travel "as passengers in automobiles . . . will be paid for at the pro rata rate." The record shows, without serious contradiction, that Claimants were transported either by a Carrier owned bus or by a "Carry All". Webster's New Collegiate Dictionary defines "automobile" as "a self-propelled vehicle suitable for use on a street or roadway." A bus is such "a self-propelled vehicle suitable for use on a street or roadway." If the bus was operated as a public conveyance it would come under another exception to the time and one-half penalty in Rule 24 (a). Since the bus was operated by Carrier, Claimants were "passengers in automobiles" as intended in Rule 24 (a).

The Dictionary defines "Carry-All" as:

"A light covered carriage for four or more persons. A passenger automobile having a closed body, equipped with two facing seats along the sides."

Carrier describes the vehicle as "similar to a station wagon, equipped with seats and used primarily to transport employes over the Carrier's property." Petitioner does not agree. It describes the vehicle as "simply a panel truck which is equipped with make-shift benches and which is used to transport employes, tools, material and equipment." There is, obviously, a difference in the description of the "Carry All" which we are in no position to resolve since the Board may not decide a disputed factual question. We may only interpret the Agreement and, in this situation, specifically Rule 24 (a). A careful reading of that Rule and the other applicable Rules of the Agreement convinces us that the parties intended to except from the time and one-half penalty rate transportation of employes by any kind of an automobile. Even a panel truck is an automobile for this purpose. We do not believe the parties intended to confine the exception strictly to vehicles which commonly carry only passengers.

Petitioner attempts to dispel this interpretation by citing statements of employes who purportedly were paid at the time and one-half rate for travel time. These statements are not in every instance specific. For example one says:

> "We were always paid at time and one-half rate for all overtime from the time we reported to our starting point at Virginia until we returned."

It does not say by what means they were transported. This is the essence of Rule 24. Similar language is replete in many of the quoted statements.

Carrier denies all this and says:

> "The only time the employes have been paid time and one-half for traveling are under the following conditions: (1) Travel in connection with work trains, (2) when traveling by motor cars, (3) when traveling by trucks not equipped to carry passengers, and (4) when working as drivers of company vehicles."

In support of this, Carrier has placed in the record affidavits of Track Timekeepers from 1926 to 1959 which support the above statement. Also in the record are copies of payroll records which attempt to refute the statements submitted by Petitioner. There, again, we have a conflict of facts which we may not resolve.

Petitioner also argues that Carrier's refusal to make a joint check of the payroll records is an admission that Carrier has paid travel time at the penalty rate. We have no quarrel with the general principle. But we are obliged to reiterate the fact that the language in Rule 24 (a) is clear and unambiguous. It needs no convincing evidence to give it meaning and intent. There is no merit to the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1964.