Award No. 13018
Docket No. MW-12908

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD 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 Relief Foreman John L. Palmer and Section Laborers Frank Anderson Jr., E. W. Shreve, H. Robinson, Barney Frothingham, J. O. Reynolds, E. Glass and Charlie Miller at their respective time and one-half rates of pay for services performed on Saturday, September 18, 1954 from 12:00 Noon to 1:30 P.M. and from 8:30 P.M. to 10:00 P.M.

(2) The claimants named 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 rendered during the period mentioned in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant employes are each regularly assigned to a work of Monday through Friday. Saturdays, Sundays and seven designated holidays are rest days. The Claimants were assigned to either Section 62 at Stonefort, Illinois or to Section 63 at Robbs, Illinois.

On Saturday, September 18, 1954, a derailment occurred at Belle Rive, Illinois, and the claimant employes were sent to that point to provide assistance in making necessary track repairs. They were called at 12:00 noon on Saturday, September 18, 1954 and were released at ten o'clock P.M. They were compensated at time and one-half rates for service performed at Belle Rive (7 hours) but were compensated only at straight time rates for the service performed in going to and from Belle Rive.

The subject claim was properly and timely presented and handled at all stages of progress, and is identified by the Carrier as Case No. 5. It was subsequently agreed to hold further progress of this (and 12 others) case in abeyance, to be disposed of within thirty (30) days after receipt of Award on Cases Nos. 2 and 3. That Agreement reads:

tended for by the Employes. Under the rules, as stated, such time will not be paid for. The claim should be denied."

This Board in its Awards 6651 and 8457 properly construed the meaning and intent of the Travel Time Rule wherein it stated:

AWARD 6651. (Third Division)

"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."

AWARD 8457. (Third Division)

"The sole issue in this case is what constitutes the proper rate of pay for travel time under the effective Agreement.

Employes rely on Rule 4, Article 7, 'Hours of Service', Rule 1, Article 8, 'Holidays', and Rule 1, Article 11, 'Calls', as requiring payment of time and one-half for time consumed in traveling to and from the repair site.

Carrier insists that Rule 2 of Article 12, 'Travel Time', is the applicable rule and that Claimnts have been properly compensated under that rule. It also cites this Division's Award 6651, involving the same parties and issuc, as controlling.

After thorough study of all the evidence of record, as well as the awards cited to us by both parties, we have reached the conclusion that the Carrier's position is sound and that this claim must be denied.

Award 6651 held, and properly so, that Rule 2 of Article 12 was the controlling rule as a specific contract provision designed to meet a particular situation, i.e., the rate of pay that the parties agreed would be applicable to time spent in traveling to and from the work sites. As such, Rule 2 prevails over those rules relied on by the Employes under established and accepted principles governing the interpretation and construction of contracts."

In conclusion Carrier submits that its position in the instant claim is well founded and the claim presented should be denied.

OPINION OF BOARD: This claim involves the payment to be made for time used by Claimants in traveling to and from a derailment on a rest day. Claimant's were compensated at straight time rates for the time used in going to and from the derailment. They claim that the proper rate of compensation was at the time and one-half rate.

Claimants initially (and almost exclusively) base their recovery upon a Letter of Agreement dated October 13, 1955. It is their contention that the parties agreed to hold this case, along with twelve other cases in abeyance, to be disposed of within thirty (30) days after receipt of award in two cases which ultimately were decided in Award 9983. The letter relied upon reads as follows:

"October 13, 1955

Mr. W. B. Young, General Chairman
Brotherhood of Maintenance of Way Employes
Room 201
920 South Michigan Avenue
Chicago 5, Illinois

Dear Sir:

Referring yours September 20, and recent conversation about travel time involved in your Cases 2, 3, 4, 5, 18 and 20, I am agreeable to:

(1) Your progressing one of these cases, preferably Nos. 2 and 3, if desired, to the Adjustment Board, which I believe is covered by your letter of May 12, 1955.

(2) Each party to use his own Statement of Facts.

(3) Each to prepare his position and when ready we will place together and submit to the Board in accordance with past practice.

(4) Claims covered by your Cases 4, 5, 18 and 20 will be held in abeyance and disposed of within thirty (30) days after receipt of award in this case.

Please advise if this is agreeable.

Yours truly,

/s/ F. A. Fitzpatrick
L."

Claimants contend that by this letter the parties intended to agree and did agree that all cases held in abeyance would be disposed of on the basis of and in conformity with the ruling of Award 9983.

Award 9983 sustained the Claimant's position, treating time used in traveling to and from work sites as "service performed" rather than as "travel." These Claimants contend that, in accordance with the above Letter Agreement, this claim should likewise be sustained. They point out that the twelve (12) other cases held in abeyance were disposed of in conformity with Award 9983 and in accordance with the intent of the above Letter Agreement. It is their further contention that the Carrier should not now be allowed to assert a distinction, if any, and argue or re-argue the merits of this case.

Carrier admits that it agreed to hold the cases in abeyance and to dispose of them within thirty (30) days after Award 9983 was rendered. How-

ever, it denies that it intended, by such Letter Agreement, to be bound to dispose of such cases in accordance with such award. It points out that there is no language in the letter which clearly binds it to do so. Carrier admits that it did dispose of the other cases held in abeyance in conformity with Awrd 9983, but now asserts a distinction between this case and the others in that here an emergency situation existed. Under such situation, they contend that Rule 41 (b), relating to temporary or emergency travel is clearly applicable.

After careful consideration of these contentions this Board is of the opinion that the Letter of Agreement, above quoted, was intended to bind the parties to dispose of this case, as well as others held in abeyance, within 30 days after, and in accordance with Award 9983. This is the only obvious purpose for such an Agreement and Carrier has offered no alternate purpose which could logically serve as the intent of the parties. Therefore, even if it were conceded that the case now before us is, to some degree, distinguishable from the other cases, Carrier cannot now assert such a distinction. Any distinction should have been recognized before grouping this case with others which were to be held in abeyance and to be decided within thirty (30) days after allegedly similar cases being sent up were decided. To allow Carrier to agree that the case is now distinguishable would destroy the purpose and intent of the Agreement which the parties reached on the property. Although we prefer to rule upon the merits of any case before us, it is imperative that the parties abide by agreements reached by them upon the property.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.