



Award No. 15953
Docket No. MW-16523

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it refused to allow Foreman R. A. Renner and Painter B. M. Kruse five (5) hours of travel time pay each when their outfit cars were removed from Clyde, Illinois on July 11, 1965. (Carrier's file M-1126-65.)

(2) Foreman R. A. Renner and Painter B. M. Kruse each be allowed five hours' pay at their respective straight-time rates because of the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Foreman Renner and Painter Kruse were assigned to Paint Gang No. 3, and occupied outfit cars 250278 and 210999 stationed at Clyde Yard within the Chicago Division. The claimants were assigned to work from 7:45 A. M. to 4:15 P. M., Mondays through Fridays (Saturdays and Sundays were designated rest days).

At 11:00 A. M. on Sunday, July 11, 1965 the aforesaid cars were moved to a new location at Union Avenue, arriving there at 4:00 P. M. This move entailed movement through Clyde Yard to the Western Avenue Yard, then through Western Avenue Yard to Union Avenue Yard, thus being in transit for five (5) hours.

Claimant Renner submitted a travel time slip (From 2703 — Revised) in behalf of himself and Claimant Kruse requesting five (5) hours of travel time pay at their respective rates for the period their outfit cars were traveling. The travel time was disallowed by a notice reading:

"Chicago, Illinois
July 14, 1965

Mr. R. A. Renner:

Referring to enclosed Travel Time for July 11, 1965, is turned down and will not be allowed, on the grounds that your cars were moved within the terminal from one yard to another.

/s/ R. G. Brouse
Master Carpenter

RGB:gfw"

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On the date specified in the claim, the outfit cars, occupied only by Claimant Kruse, were moved by a yard engine from Clyde Yard to Union Avenue, both yards being within the terminal limits of Chicago.

Foreman Renner was not in the cars and did not accompany them during this switching operation. The fact that claimant Foreman Renner was not in the outfit cars during this switching operation was directed to the General Chairman's attention in Carrier's letter of November 15, 1965, copy attached hereto identified as Carrier's Exhibit No. 1. That fact has never been questioned by the Union, nor has the Union ever made any attempt to refute it while handling the claim on the property. It must, therefore, be accepted as a verified fact.

The schedule of rules agreement between the parties, effective September 1, 1949, is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: We are here concerned with Rule 46 (a) of the applicable Agreement, which states:

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

Here, Claimants' outfit cars were moved by the Carrier from Clyde Yard to and beyond Western Avenue Yard to Union Avenue Yard, traveling on the main line between Yards.

Award 12655, involving the same parties and rule, held:

"Claimants were, from 2:00 P. M., until 5:00 P. M., Sunday waiting between train connections on their rest day during the hours established for work periods on other days; and it is . . . the order of the Board that their claim be sustained as to this time period and that they be compensated for these three hours each, at straight time."

In the claim here the Carrier moved Claimants' outfit cars from Clyde Yard to Union Avenue Yard on a (rest day) Sunday between 11:00 A. M., and 4:00 P. M., which was within Claimants' established work periods on regular days.

Carrier's action clearly was a violation of Rule 46 (a) and they are entitled to be compensated in the manner provided in that Rule. The rule makes no exceptions, nor limitations, neither can we.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 21st day of November 1967.

CARRIER MEMBERS' DISSENT TO AWARD 15953, DOCKET MW-16523 (Referee Edward A. Lynch)

Rule 46 (a) does not support this Claim. In order to qualify for travel pay under Rule 46 (a) an employee must be "required by management to travel" and such travel has to be "in outfit cars." In addition, an employee is not traveling when he never leaves a terminal even if the first two requirements were met.

Carrier's contention that an intra-terminal movement does not constitute travel was previously upheld by this Board in Awards 13990 and 13157. Awards to the contrary have not been cited nor any valid reason given for departing from that interpretation.

Carrier's position is further supported by its undenied statement that "the switching of cars by a yard engine within a terminal is not now and never has been considered traveling under the provisions of Rule 46." (R. p. 16)

Award 15953 is in error and we dissent.

W. M. Roberts
J. R. Mathieu
C. H. Manoogian
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