



Award Number 17627

Docket Number MW-18192

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

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

- (1) The Agreement and practice thereunder were violated when Train 48 did not stop at Bay City, Wisconsin on September 25, 1967 as requested by Welder Helper G. E. Johnson (System file 32-W-3/M-1249-68).
- (2) Welder Helper G. E. Johnson be allowed eight (8) hours' pay at his straight time rate because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On Friday, September 22, 1967, the claimant, a regularly assigned welder helper assigned to work at Barstow, Illinois, made his customary week-end visit to his home at Bay City, Wisconsin. He gave the agent at Savanna, Illinois, a message to be sent to the Dispatcher at St. Paul, Minnesota, wherein he requested that Train No. 48 stop for him at Bay City on Sunday, September 24, 1967, so that he could return to his work location in ample time to start work at his regular starting time on Monday.

Although it was and is customary for Trains No. 48 and 47 to stop at flag stops for the convenience of employees making week-end visits to their homes and/or returning to their work locations, Train No. 48 did not stop at Bay City, Wisconsin in this instance. As a result, the claimant was unable to return to his work location until Tuesday and was thereby deprived of eight (8) hours' pay he would have otherwise earned on Monday.

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: Claimant is System Welder Helper. During the week preceding the date of the claim he was working at Barstow, Illinois. At the close of his tour of duty on Friday, September 22, 1967, Claimant made a week-end trip to his home at Bay City, Wisconsin, some 295 miles from his point of employment. He was scheduled to return to work at Barstow on Monday, September 25, 1967, however, he did not report

for work until Tuesday, September 26. His excuse for not reporting for work on Monday was that passenger train No. 48 failed to stop for him at Bay City on Sunday night, September 24. Claim was presented by Local Chairman Marshall in his letter of October 9, 1967, copy attached hereto identified as Carrier's Exhibit No. 1, for a day's pay "account of No. 48 not stopping at Bay City, Wisconsin to pick up Mr. Johnson." No rule or agreement was cited in that letter in support of the claim.

The claim was declined by Superintendent C. J. Miller in his letter of November 7, 1967, copy attached hereto identified as Carrier's Exhibit No. 2, on the basis that Bay City is not a regular stop for train No. 48, but that the train stops there on notice only for revenue passengers; also that there is no rule in the agreement to support the claim.

Claim was then appealed by the General Chairman in his letter dated December 21, addressed to the Superintendent, Automotive & Work Equipment; copy of which is attached hereto identified as Carrier's Exhibit No. 3. Again, no rule or agreement was cited in alleged support of the claim.

The claim was declined by Mr. Merrill in his letter of January 24, 1968, copy of which is attached hereto identified as Carrier's Exhibit No. 4. That declination was also made on the basis that there is no rule or agreement that requires stopping a passenger train to pick up other than revenue passengers. Claimant is not a revenue passenger, but was traveling on a pass.

Claim was then appealed to Carrier's highest appellate officer in the General Chairman's letter of February 2, 1968, copy of which is attached hereto identified as Carrier's Exhibit No. 5. Still no rule or agreement was cited in support of the claim.

Final declination of the claim on the property is contained in Carrier's letter of March 28, 1968, copy of which is attached hereto identified as Carrier's Exhibit No. 6. That declination was also made on the same basis as previous declinations of local officers.

In addition to the above referred to Exhibits, Carrier also attaches hereto as its Exhibit No. 7, a photo copy of page 10 of the timetable in effect on the date of the claim. It will be noted that reference note 'c' for train No. 48 at Bay City reads as follows:

"c—Stops to let off or pick up revenue passengers when notified at St. Paul by 10:00 P.M., Telephone 459-9377."

The schedule of rules agreement between the parties, effective September 1, 1949 and amendments and supplements thereto are by reference made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant, assigned to work at Barstow, Illinois requested the Agent at Savanna, Illinois to instruct the Dispatcher at St. Paul, Minnesota to have Train No. 48 stop for him (Claimant) at Bay City, Wisconsin (Claimant's home) on Sunday, September 24, 1967 so that Claimant could return to his work location in time to report at his regular starting time on Monday. Train No. 48 did not stop at Bay City, Wisconsin as requested and as a result Claimant did not report to work until Tuesday, thereby losing one (1) days pay. The Organization contends that Claimant should be compensated in this instance because of the long established prac-

tice of transporting employees from their homes to work locations and for the further reason that Carrier violated an order of the Wisconsin Public Service Commission which required Train No. 48 to make a "flag stop" for all classes of traffic as a condition for discontinuance of certain trains.

This Board cannot uphold these contentions. There is a complete absence of any rule in the Agreement which would support a claim of this type. In order to sustain a claim, there must be a violation of a specific Rule. See Awards 13207 (McGovern), 13741 (Dorsey), 16552 (Dorsey), 15835 (Ives). It may be true, as the Organization contends, that Carrier had been stopping at Bay City, Wisconsin for a long established period of time for the purpose of allowing Claimant to board in order to return to his work location. This does not alleviate Claimant from his (Claimant's) responsibility of finding his way to and from his work location on time. To sustain this claim would be placing the preposterous burden of insuring transportation to all similarly situation employes to their work locations on the Carrier. The fact that transportation had been provided in the past was a matter of grace on part of Carrier—not a matter of right on behalf of Claimant.

Also, a violation of the Wisconsin Public Service Commission referred to by the Organization does not prove a violation of the Agreement; unless such order is incorporated in the Agreement. There being no such inclusion, this Claim will be denied.

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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1969.