

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

David L. Kabaker, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION****CHICAGO GREAT WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate L. E. Mohr for deadheading Fredericksburg, Iowa to Carroll, Iowa, June 4, 1966.

2. Carrier violated the Agreement between the parties when it failed and refused to properly compensate C. E. Wenthe for deadheading Fredericksburg, Iowa to Waterville, Minnesota, June 12, 1966.

3. Carrier shall now compensate L. E. Mohr 15 hours, 15 minutes pay for deadheading June 4, 1966. Carrier shall also compensate C. E. Wenthe 8 hours pay for deadheading June 12, 1966 (less 6 hours paid).

EMPLOYEES' STATEMENT OF FACTS:**(a) STATEMENT OF THE CASE**

The claim here involved was filed and handled in accordance with the terms of the Agreement and the Railway Labor Act, up to and including the highest officer of the Carrier, and has been declined.

The Agreement between the parties, effective June 1, 1948 (Reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part of this dispute.

The claim here involved arose out of Carrier's failure to properly compensate L. E. Mohr for deadheading June 4, 1966, and also Carrier's failure to properly compensate C. E. Wenthe for deadheading June 12, 1966.

Compensation for deadheading is governed exclusively by the terms of Rule 20, which provides a maximum allowance of 8 hours for each 24 hours deadheading, computed from departing time to arriving time, including layover time. As previously indicated herein, claims under consideration are premised on contentions, theory, conjecture and speculation, and until such time as you may be able to produce evidence that Claimants actually consumed time deadheading during the periods for which compensation is claimed, I have no alternative but to sustain decision of Supervisor of Wage Schedules and respectfully decline payment of claims in their entirety.

Yours truly,

/s/ D. K. Lawson
Vice President — Personnel

OPINION OF BOARD: The two claimants, L. E. Mohr and C. E. Wenthe, extra employees, were required to travel from their headquarters at Fredericksburg, Iowa, to protect temporary assignments. Mohr traveled to Carroll, Iowa, a distance of approximately 200 miles by highway. Wenthe traveled to Waterville, Minnesota, about 150 miles by highway. No passenger trains are operated in this territory, and the claimants drove their automobiles.

Mohr claimed 15 hours and 15 minutes deadhead pay, and Wenthe claimed 8 hours. Rule 20 reads as follows:

"Except as otherwise provided in this agreement, extra employees deadheading on Company's business shall be paid for the actual time consumed, computed from departing time to arriving time including layover time, at the rate of position relieved, on the minute basis; such payment not to exceed eight (8) hours for each twenty-four (24) hours computed from departing time. This will not apply when deadheading exclusively within a terminal, or when payment otherwise accrues which would serve as a duplicate. Deadheading resulting from the exercise of seniority rights shall not be paid for."

The time claimed was based on freight train schedules from Fredericksburg to the respective work locations, including layover time. Employees contend that support for this basis lies in a letter from Carrier's Chief Dispatcher, concurred in by the General Chairman, in which, it is alleged, the freight train schedules were used to determine the deadhead time required to be paid for by Rule 20. In short, the Employees contend that the letter just referred to constitutes an agreement to use freight train schedules as the "yard stick" for computing time under Rule 20.

Carrier denies any such intent and the Employees did not file a rebuttal. Under these circumstances the Board must find that the Employees have failed to support their contention. Therefore, the claims, as such, are denied.

The record shows, however, that Carrier acknowledges an obligation to pay for the deadheading under a formula that was formerly agreed to and has been generally applied for several years. This formula provides for

computation of the time on the basis of considering 25 miles per hour to equal the necessary time consumed. On that basis Mohr, who drove 200 miles, would be entitled to payment for 8 hours, and Wenthe, who drove 150 miles, would be entitled to payment for 6 hours. Wenthe was paid for 6 hours and is entitled to nothing more. Mohr was not paid anything, but now should be paid for 8 hours in accordance with Carrier's showing.

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 claims should be disposed of in accordance with the Opinion.

AWARD

Claims disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.