Award No. 18415
Docket No. SG-18597

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Burlington & Quincy Railroad Company.

In behalf of Foremen K. E. Wear, Signalman L. R. Farlin, and Assistant Signalman W. J. Webb, Signal Gang #131, for travel time for the following work point changes (except Farlin excluded from move Savannah to Earlville):

1. March 22, 1968, at 9:30 P. M., to 2:00 P. M. March 24, 1968, Aurora, Illinois, to Prairie-du-Chien, Wisconsin. 41 hours and 30 minutes.

2. April 28, 1968, at 2:00 P. M., to 7:00 A. M. April 28, 1968, Prairie-du-Chien, Wisconsin, to Savannah, Illinois. 17 hours.

3. May 17, 1968, at 7:10 A. M., to 4:30 P. M. May 18, 1968, Savannah, Illinois, to Earlville, Illinois. 32 hours and 20 minutes.

4. June 17, 1968, at 8:00 P. M. to 7:00 A. M. June 18, 1968, Earlville, Illinois, to Amboy, Illinois. 11 hours.
(Carrier's File: S-116-68)

EMPLOYES' STATEMENT OF FACTS: This is a claim for pay for time signal gang employes spent in traveling from one work point to another outside assigned hours or on rest days. It was initiated under Section I-C-1 of the Award of Arbitration Board No. 298.

The initial claim, filed under date of July 19, 1968, in substantially the same form as our Statement of Claim, has been partially settled on the property. The record herein will show that on January 2, 1969, Carrier made an offer of partial settlement, with the only question before this Board at this time being the claim on behalf of Foreman Wear.

Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 7. As shown thereby, this dispute was handled to a conclusion on the property, up to and including conference

The settlement of the claims in behalf of Claimants Webb and Farlin, as outlined in Carrier's Exhibit No. 1 and as described above, was accepted by the General Chairman in his letter dated August 16, 1969, copy attached hereto identified as Carrier's Exhibit No. 3. It will be noted therein that the General Chairman stated, under item No. 4, as follows:

"(4) I accepted the other claims as per your letter dated 1-2-69."

Claimant Wear, the Foreman, is a monthly rated employe covered by Rule 58, which provides that the monthly rate constitutes compensation for all services rendered, except as otherwise provided for in the rule. The only exception is for service performed on the one rest day each week (Sunday) when rules applicable to other employes will apply. The only time that claimant Wear travelled on Sunday was March 24, and he was allowed 12 hours and 50 minutes, as shown in Carrier's letter of August 27, 1969, copy attached hereto as Carrier's Exhibit No. 4.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization originally filed claim on behalf of three members of Signal Group No. 131 for travel time. The claims of two of the members were settled on the property, and the claim of Claimant, Foreman K. E. Wear, remains for decision.

The Organization initiated the claim by letter to Carrier, dated July 19, 1968, from General Chairman, W. W. Lauer, setting forth that the claim for travel time was being filed under Arbitration Award No. 298, Section I-C-1 of said Award.

Carrier's Director of Labor Relations, G. M. Youhn, advised General Chairman Lauer, by letter dated January 2, 1969, that in regard to item 1 of the claim the elapsed travel time was 34 hours and 20 minutes and not 41 hours and 30 minutes as claimed by the Organization and that since Claimant Wear drove his own automobile and is a monthly rated employe, he is not entitled to any travel time pay; that in regard to Item 2 of the claim it is denied in regard to the 17 hours travel time on the basis that Claimant and his outfit did not travel on April 28 and 29, 1969; that in regard to Item 3 of the claim, the elapsed travel time was 33 hours and 15 minutes, and denied the claim of Wear on the basis he was not entitled to any additional payment because he is a monthly rated employe and he was paid 8 hours on each date; that in regard to Item 4 of the claim, the elapsed travel time was 1 hour, 30 minutes, and denied Claimant Wear's claim on account of being a monthly rated employe.

By letter dated August 16, 1969, the Organization accepted the Carrier's settlement of the claims other than Wear's and offered to settle the claim of Claimant Wear on the payment of travel time of 26 hours and 20 minutes for March 23 and 24, 1969, and 16 hours and 50 minutes for May 17, 1969. The letter also mentioned that in March "Mr. Wear was paid 208 hours pay and is therefore entitled to 31 hours additional pay for travel time." and that "in May, 1969 his total hours of payment would be 216 hours service plus 15 hours travel time."

On August 27, 1969, Carrier, by letter, rejected the Organization's offer of settlement, claiming that under Rule 58 of the basic Agreement monthly rated employes are entitled to travel time only on their Sunday rest day and "Based on this conclusion, the only travel time to which Claimant Wear is entitled is the 12 hours and 50 minutes on Sunday, March 24, and this will be allowed."

Rule 28 of the Agreement reads in part:

"(a) Foremen * * * will be paid the monthly rate specified in Rule 57 and an employe assigned to the maintenance of a territory *who does not return to his home station daily may be paid the applic*able monthly rate referred to in Rule 57 which shall constitute compensation for all services rendered except as hereinafter provided in this rule.

(d) If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salary for these positions may be taken up for adjustment.

(e) The straight time hourly rate for monthly rated employes shall be determined by dividing the monthly rate by 208⅔ hours.

(f) In computing future wage adjustments for monthly rated employes covered by this agreement, 208⅔ hours shall be used as the multiplier.

(g) Monthly rated employes shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employes who are subject to the terms of this agreement will apply to service which is performed by monthly rated employes on such assigned rest day.

(h) Ordinary maintenance or construction work shall not be required of monthly rated employes on the 6th day of the assigned work week which ordinarily will be Saturday."

Carrier asserts that when Interpretation No. 34 to Arbitration Board Award No. 298 is read in conjunction with Rule 58, it is perfectly manifest that monthly rated employes are entitled to travel time in addition to their monthly rate only on their Sunday rest day; that said Interpretation No. 34 to said Award No. 298 is controlling herein and the interpretation specifies that travel time allowance does not begin to apply until the overtime rule applies and the overtime rule does not apply to monthly rated employes, such as Claimant herein, except on the Sunday rest day, and therefore Claimant was allowed travel time on his Sunday rest day in this case.

Arbitration Board No. 298 Award provides in part:

"I. The railroad company shall provide for employes who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels as follows:

C. Travel from one work point to another.

1. Time spent in traveling from one work point to another outside of regularly assigned hours or on a rest day or holiday shall be paid for at the straight time rate."

The Board finds that the parties, in accepting the Award of Arbitration Board No. 298, agreed to abrogate the then existing Agreement to the extent in conflict, and therefore the disposition of the claim must be based on the application of Section I-C-1 as applied to the facts in this claim.

Claimant Wear was the foreman of System Signal Gang No. 131, headquartered in outfit cars, a type of service, the nature of which regularly required them to live away from home throughout their work week, and as such, are subject to the provisions of Article 1 of Award of Arbitration Board No. 298. (See Carrier's Statement of Facts, pg. 27.)

Section I-C-1 of said Arbitration Board clearly provides for payment at the straight time rate for time spent in traveling from one work point to another outside of regularly assigned hours. Interpretation No. 2 of said Arbitration Board Award No. 298 stated that "Under the provisions of Section I-C-1, each man will be paid the amount of travel time from one point to another which the conveyance offered by the Carrier would take regardless of how any man actually travels from one point to the other." (Claimant traveled by personal automobile although train time was offered by Carrier.) See also Interpretations 9 and 17, which are similar to Interpretation 2 to said Award.

Interpretation No. 34 (Question No. 23) BRS and L & N:

"Question: May Carrier exclude monthly-rated employes from the travel time and expense provisions of sub-paragraph C-1 and C-2 of Section 1?

Answer: The monthly-rated employes of the class and craft involved on this property are subject to a rule which provides that the overtime is paid after 211⅔ hours. Travel time applies toward the 211-⅔ hours. SUCH MONTHLY RATED EMPLOYES ARE NOT EXCLUDED FROM THE TRAVEL TIME AND EXPENSE PROVISIONS OF THE AWARD. Travel time allowances for time consumed traveling and waiting en route would not begin to apply until after expiration of this 211⅔ hours comprehended in this monthly rate." (Emphasis ours.)

Therefore, it is clearly seen that under the provisions of Section I-C-1 of Arbitration Board Award No. 298 and the interpretation thereof, including Interpretation No. 34, Claimant Wear is entitled to travel time for the three months in question, March, May and June. (The Organization did not dispute the Carrier's claim that Claimant or his outfit didn't travel on April 28 and 29, 1968.)

Therefore, we will sustain the claim to the extent that Claimant has not been paid at the straight time rate for travel time which resulted in work in excess of 211⅔ hours in each of the months of March, May and June, 1968 and will remand the claim to the property for a determination of said hours, if any, worked by Claimant, including travel time, in excess of said 211⅔ hours for each of the months aforesaid.

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 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 was violated in accordance with the Opinion.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1971.

Special Concurring Opinion to Award 18415, Docket SG-18597

We concur in the holding of Award 18415 that the Award of Arbitration Board No. 298 provides for payment to a monthly rated employe in addition to his salary for time spent in travel under Section I-C-1 of the Arbitration Award. Indeed, Award 18415 together with Interpretation No. 34 of the Arbitration Board firmly establish that fact.

It remains our position, however, that the differences between the pay rules for monthly rated employes under the schedule Agreements in this dispute and that in the dispute disposed of by the Interpretation No. 34, supra, dictated a fully sustaining award here. That position notwithstanding, the present Referee has held that payment for travel time shall be made for travel on days covered by the employe's monthly salary only after travel time results in work in excess of 211⅔ hours in a month. The claim was remanded to the property for a determination of said hours, if any, worked by Claimant, including travel time, in excess of 211⅔ hours for each month.

Without prejudice to our original position, and to keep the record straight, we here set our understanding that the words "hours * * * worked by Claimant" mean all hours worked—both during and outside of regularly assigned hours—on days covered by his monthly salary. We further understand that such hours are to be combined with his travel time and that he shall then be paid additionally for that part of the sum in excess of 211⅔ hours.

W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member

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