

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
MISSOURI-KANSAS-TEXAS LINES**

DISPUTE.—

"Claim for pay at pro rata rate, as provided for in Article 2, Section 17-A, of current agreement, for time consumed after the end of regular working hours in returning to home station at Houston, Texas, from Sealy, Texas, on September 20, 1934, and all subsequent days when like conditions prevailed."

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Willard E. Hotchkiss was called in as Referee to sit with the Division as a member thereof.

The following is set forth as the "Brotherhood's Statement of Facts":

"Mr. Hurley is employed on the M. K. & T. Railroad as a signal maintainer with headquarters located at Houston, Texas. His regular assigned duties are the maintenance of automatic signals and highway crossing protective devices on this railroad in the vicinity of Houston, Texas, and the interlocking plant at Sealy, Texas, which is located about forty-nine miles north of Houston.

"Prior to January 1934, Mr. Hurley was instructed to make weekly trips to Sealy for the purpose of making inspection and the necessary repairs to the interlocking, leaving Houston on train No. 24 at 12:01 p. m., arriving at Sealy at 1:25 p. m. He would return to Houston from Sealy on the same day, leaving Sealy at 5:43 p. m. and arrive at Houston at 7:15 p. m. if the train was running on scheduled time. As 5:00 p. m. was the end of Mr. Hurley's assigned working hours he was able to work but three hours and 35 minutes on the interlocking plant on each of the trips.

"Under date of January 9, 1934, Mr. Hurley was advised that it was necessary that he give more attention to the maintenance of the interlocking plant at Sealy and was instructed to go to Sealy on No. 24 and remain there until the departure of No. 23 the following day, which would afford an additional eight hours' service to the plant every other week.

"On the days that Mr. Hurley made the trip to Sealy and returned to Houston the same day he was paid properly and in accordance with the provisions of the existing agreement. For the trips to Sealy when he did not return to Houston the same day, living expenses were allowed while at Sealy. However, the management declined to pay travel or waiting time outside of the regular assigned working hours which amounted to two hours and fifteen minutes on each date involved for time consumed in returning to Houston on train No. 23."

There is in evidence an agreement between the parties bearing effective date of February 16, 1922. The employees cite and rely on the following rules as supporting their claim:

"SECTION 16.—Hourly-rated employees sent from home station to perform work and who do not return to home station on the same day will be

allowed time for traveling or waiting in accordance with Section 17-A of this Article. All hours worked will be paid for—straight time for straight time hours, and overtime rate for overtime hours. Actual expenses will be allowed at the point to which sent if meals and lodging are not provided by the Carrier or if camp cars to which employees are assigned are not available."

"SECTION 17-A.—Employees (except those covered by Section 24 of this article) who do not return to home station on the same day, when not in camp cars and traveling by direction of the management, will be allowed actual time for traveling or waiting during the regular working hours. Actual time, not to exceed eight (8) hours, at the straight time rate, from the time required to report to the time of arrival at the point to which sent will be paid as full compensation for traveling or waiting between the end of the regular hours of one day and the beginning of the regular hours of the following day when sleeping accommodations are not available. Actual expenses but no time will be allowed for traveling or waiting between the end of the regular hours of one day and the beginning of the regular hours of the following day when sleeping accommodations are available."

The amount involved in this claim as set forth in the petitioners' brief is for time spent in waiting and traveling from Sealy to Houston between the end of the regular working hours and the arrival of train No. 23 at Houston on the following dates:

Sept. 20, 1934: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Oct. 2, 1934: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Oct. 23, 1934: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Nov. 24, 1934: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Dec. 3, 1934: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 April 20, 1935: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 May 21, 1935: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 June 18, 1935: 5 p. m. to 8:30 p. m.—3 hours 30 minutes.
 Oct. 22, 1935: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Nov. 19, 1935: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Dec. 3, 1935: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Jan. 18, 1936: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.
 Feb. 11, 1936: 5 p. m. to 7:15 p. m.—2 hours 15 minutes.

and all subsequent dates where like conditions existed.

The petitioners' brief explains that on June 18, 1935, train No. 23 was late and did not arrive in Houston until 8:30 p. m., which resulted in a claim for three hours and thirty minutes time instead of two hours and fifteen minutes as on the other days in question. The brief explains that the claim does not include the time consumed in disposing of tools and material after arrival at Houston.

CARRIER'S STATEMENT OF FACTS.—The Carrier's Statement of Facts is not greatly different from that of the petitioners' except that it recites that the carrier had not previously to the date of the statement, March 19, 1936, been presented with claim specifically applying to September 20, 1934, or any other date. The carrier also states that Mr. Hurley was paid expenses on September 19th at Sealy—\$1.00 for lodging, 40¢ for breakfast September 20th, 50¢ for dinner, and 40¢ for supper. The carrier's statement concludes: "No time was allowed for waiting for traveling from 5:00 p. m. to 7:15 p. m. The time allowances and expenses for meals and lodging subsequent to September 20, 1934, were similar."

CARRIER'S POSITION.—

"The claim was not appealed to this office until July 18, 1935, when, after various correspondence and conference discussing the claim, the request for payment of the travel time after 5:00 P. M. when Maintainer Hurley did not return to Houston on the same day was declined.

"Agreement provisions in the signalmen's agreement applying to employees required to perform service away from their home station are as follows:

"ARTICLE 2

"SECTION 15.—Hourly rated employees performing service requiring them to leave and return to home station daily will be paid continuous

time, exclusive of meal period, from time reporting for duty until released at home station. Straight time for all straight-time work. Overtime for all overtime work. Straight time for all time traveling or waiting."

There follows a quotation of Section 16 and Section 17-A, as quoted above.

In a supplemental statement the petitioners correct the statement of carrier in this particular, to wit: that the carrier only furnished breakfast and dinner and no supper on September 20th and on subsequent dates when the petitioners returned from Sealy to Houston under like circumstances.

There is some discussion between the parties concerning the diligence with which the claim was pressed prior to bringing it before this Board, but this question does not appear controlling.

The issue in this case is clearly set forth in the record and in arguments made before the Referee by representative of the petitioners and of the carrier, respectively. The carrier points out that at no time has the carrier ever paid for travel time under like circumstances and that the employees do not claim ever to have been paid for travel time under such circumstances in the past. It is also pointed out that the employee was fully informed as to the grounds of denying his claim 1½ years prior to the origination of this particular claim. It is then maintained that "there is no ambiguity whatever in Section 17-A. This section clearly defines those cases or instances where sleeping accommodations 'are not available', and those that 'are available', and further "there is no reason why we should interpret 'sleeping accommodations' to mean 'sleeping car accommodations'."

In support of the carrier's claim, Award 73 in Docket SG-66 by Referee Samuell is cited. This case involved an assignment in which the claimant had to make a circuit away from his home station which required him to be absent several days, which necessitated the availability of sleeping accommodations away from home. Referee Samuell disallowed the claim.

OPINION OF REFEREE.—The Referee cannot agree with the carrier and the carrier's representatives that there is no ambiguity whatever in Section 17-A as applied to the circumstances of this case. As the Referee views the facts, the only difference between the circumstances on the occasions to which this claim applies and the previous occasions on which the claimant had been allowed travel time for his return trip from Sealy to Houston, is that the carrier in order to insure a more thorough attention to the work to be performed at Sealy, ordered Mr. Hurley to spend the night at Sealy and return the following day instead of returning the same day.

The carrier, to be sure, was put to some expense for lodging and meals on account of Mr. Hurley remaining in Sealy over night but it would appear to the Referee a somewhat far-fetched contention that the circumstances were essentially different on September 20th and on subsequent days on which Mr. Hurley returned to Houston after remaining over night at Sealy by the carrier's orders, than they were on the days when he returned to Houston on the same day that he went to Sealy.

The Referee cannot conceive that the reference in the agreement to the availability to sleeping accommodations was intended to apply to circumstances of this sort and it would be a highly technical application of the language to make it so apply.

The parties appear to be in disagreement as to whether Mr. Hurley was furnished with supper on September 20th and on the subsequent days when he returned to Houston under like circumstances. Inasmuch as Mr. Hurley could expect to reach his home at a seasonable hour, except on the days when the train was late, there would seem to be no occasion for the carrier to furnish supper.

AWARD

The claim allowed with suitable adjustments in case it is found that supper was furnished by the carrier on the returning days in question.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 30th day of July 1936.