Award No. 3303
Docket No. SG-3309

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim that Signalman George S. Wells be paid an additional one-half hour at the time and one-half time rate for a second meal period that was not allowed and one-half hour at the half time rate for which only the pro rata rate was allowed, covering services performed on March 28, 1944. Amount claimed $1.04.

EMPLOYES' STATEMENT OF FACTS: George S. Wells, a signalman with a seniority date of 1930, bid in and was assigned to a signalman's position in Gang 8 on February 7, 1944, headquarters of the gang being the Signal Shop at San Jose, California. The assigned working hours of this gang were ten per day as follows: 7:00 a.m. to 12:00 noon and 12:30 p.m. to 5:30 p.m.

Signal Gang 8, a repair and construction gang, covers by truck the San Jose District which extends from about Lick to San Francisco, California, a distance of 55.3 miles. The gang reports at the San Jose Signal Shop for work each morning and returns to the San Jose Signal Shop each night after their tour of duty is completed.

On March 28 Signalman Wells reported for duty at 7:00 a.m. as usual at San Jose Signal Shop and left on the truck immediately thereafter for San Francisco, where he worked, except for the noon day meal period, until the job was completed and then returned to San Jose, arriving at his headquarters at 6:00 p.m. He was paid straight time for 8½ hours and overtime rates for 2 hours.

Wells was not allowed the second meal period as provided in Rule 10 at 5:30 p.m. when he had completed ten hours' service.

There is an agreement between the parties to this dispute effective March 1, 1926.

POSITION OF EMPLOYES: The Brotherhood contends that Signalman Wells was entitled to a second meal period and therefore should have been paid 8 hours at the straight time rate and 3 hours at the overtime rate. He, therefore, is entitled to be paid, in addition to what he has already received, time and one-half for thirty minutes for second meal period that he was denied, and half time for thirty minutes, for which he was paid only straight time, or an additional hour at the straight time rate.

The Brotherhood also contends that riding on a truck, such as the one used by this gang which is not properly and fully equipped for this purpose, is fully as tiresome as performing normal signal work, where the men have to use improvised seats among the material and tools in the rear of the truck.

In the instant case the claimant was not required by the carrier to perform work of any description during the periods he was riding in the truck to and from the location where work was performed; therefore, for the Division to sustain the claim in this docket would be tantamount to writing into Rule 10 immediately following the words "required to work" the additional words "or travel" and deleting from Rule 24 the following provision: "Straight time for all time traveling . . .". That the Division has the authority to construe and enforce agreements but not to make new rules or amend existing rules is an established principle.

CONCLUSION

The carrier respectfully asserts that it is incumbent upon the Division to dismiss the claim involved in this docket for want of jurisdiction; however, if the Division does assume jurisdiction and considers the claim on its merits, then the carrier submits that said claim being without basis or merit should be denied.

OPINION OF BOARD: This claim is divisible into two parts, (a) a claim for one-half hour at the time and a half rate for a second meal period that was not allowed and (b) a claim for one-half hour at half time rate, the pro rata rate having been allowed.

At the outset we are confronted with the Carrier's motion to dismiss the claim on jurisdictional grounds, in that the claim as progressed on the Carrier did not involve what we here designate claim (b). The contention of the Carrier is correct in so far as claim (b) is concerned. Section 2, Second of the Railway Labor Act provides that all disputes between a carrier and its employes shall be considered and if possible decided in conference between representatives of the carrier and the employes. Section 3(i) of the Railway Labor Act provides that disputes shall first be handled on the property and if an adjustment is not had the disputes are then referrable to the appropriate division of the Adjustment Board. It is clear that the Congress intended that the several divisions of the Adjustment Board should be an appellate tribunal and not a tribunal to which claims should be submitted originally. We are of the opinion that we are without jurisdiction to determine claim (b). From that it does not follow that Claim (a) should be dismissed. It is a separable claim, was progressed on the property and is properly here for determination. Accordingly we determine claim (a).

At the time involved the employe was under assignment to work 8:00 a.m. to 12:00 noon and 12:30 p.m. to 4:30 p.m. In addition he was authorized to work from 7:00 a.m. to 8:00 a.m., and 4:30 p.m. to 5:30 p.m. at overtime rates. In short he had a ten hour assignment, two hours of which were at overtime rates.

The employe reported at 7:00 a.m. and departed with his gang shortly thereafter by truck for San Francisco, arriving at 8:30 a.m. He then was engaged in his duties as a Signalman from 8:30 a.m. to 12:00 noon and from 12:30 p.m. to 4:30 p.m. He then departed with his gang for his home station and was released at 6:00 p.m. At the conclusion of the day the employes unload and care for some of the property in the truck and claim they are responsible for it during the trip. He was allowed pay at overtime rate for the hours 7:00 a.m. to 8:00 a.m.; straight time for the eight hours, excluding meal time, from 8:00 a.m. to 4:30 pm.; overtime for the hour 4:30 p.m. to 5:30 p.m.; and straight time for the one-half hour from 5:30 p.m. to 6:00 p.m.

Employes rely upon Rule 10:

> "Overtime hours, continuous with reglar working hours, shall be computed on the actual minute basis at the rate of time and one-half. Employes will not be required to work more than ten (10) hours without being permitted to have a second meal period. Time taken for meals will not terminate the continuous service period."

The employe contends that he was working from 7:00 a.m. to 12:00 noon and 12:30 p.m. to 6:00 p.m., or 10½ hours and hence had worked more than ten

hours without being permitted to have a second meal period. The Carrier in its submission in SG-3311, SG-3312 and SG-3313 shows that the second meal period is included in calculating overtime. Accordingly, if Claimant had in fact worked more than 10 hours, under Rule 10 he would be entitled to a second meal period, the time to be included in calculating his time. The Carrier did not give him the meal time and accordingly he did not get pay for it.

The Carrier relies upon Rule 5:

> "Except as otherwise provided in these rules, eight hours of practically continuous application to work, exclusive of meal period, shall constitute a day's work."

Likewise upon Rule 10 above quoted, and upon Rule 24:

> "Hourly rated employes performing service requiring them to leave and return to home station and who are not held out over night, 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 traveling or waiting."

The Carrier contends that the employe was "traveling" and not working a total of three hours on the day involved, hence had not worked more than 10 hours and hence was not entitled to the second meal period with pay.

The question then is had the employe worked more than 10 hours. There is no limitation on the use of the word "traveling" in Rule 24. It cannot be denied but that, as the word traveling is generally understood, the employe was "traveling" three hours out of the day. But that does not solve the problem. Was he traveling within the meaning contemplated by the use of the word in the rule?

We think the question here presented can be decided by reference to the rules as the Carrier has applied them. Rule 5 recognizes the basic eight hour day. Obviously under Rule 10 overtime begins after the expiration of the eight hour basic day. Rule 24 provides for "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." How had the Carrier construed the rule in its practical application? Obviously, when the Carrier set up this assignment of one hour overtime, eight hours straight time and then one hour overtime, it knew that these employes would be traveling by truck from their home station to the place or places of performing their work and returning. Just as obviously the Carrier expected that travel time to begin at or shortly after 7:00 a.m. The Carrier set up that travel time as overtime and by its statement here shows that it paid for the travel on the outbound trip as overtime under Rule 10. Rule 10 refers to "work" and "working hours". Likewise the Carrier shows that it paid under Rule 10 for one hour of the time traveled in returning to the home station. We are at a loss to understand any rational basis for holding, as the Carrier has determined, that the time used on the outbound trip and two-thirds of the inbound trip is to be paid for under work rules and at the same time hold that the last one-third of the return trip is not work, but travel. Either it was all traveling under Rule 24 or it was all working under rules 5 and 10. We do not see how it can be partly one and partly the other. The Carrier has determined that the time traveled here is work under Rules 5 and 10 and not traveling under Rule 24.

This does not read out of the rule the provision for "straight time for all time traveling or waiting". It means that under the factual situation here, as the Carrier itself has applied the rules, the time spent by this employe in going from his home station to his work and returning to his home station by truck is not "traveling" within the contemplation of Rule 24.

It accordingly follows that the employe having worked more than ten hours and not having been permitted a second meal period with pay is entitled to the pay for the meal time denied him.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 for the reasons stated in the Opinion claim (a) is sustained, and claim (b) is dismissed without prejudice.

AWARD

Claim (a) sustained. Claim (b) dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1946.