Award No. 3305

Docket No. SG-3311

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 Signalmen K. B. Wilkerson, H. F. Wells, R. D. Berlier, C. A. Armstrong and Assistant Signalman L. L. Hase be reimbursed for cost of meals eaten away from home station while performing emergency repair work March 1, 5 and 12, 1945. Expenses claimed $17.10.

EMPLOYES' STATEMENT OF FACTS: Messrs. Wilkerson, Wells, Berlier, Armstrong and Hase are members of Signal Gang 8 of the Coast Division, Southern Pacific Company, with headquarters at the San Jose Signal Shop, San Jose, California. The regular working hours of this gang are eight hours per day, as follows: 8:00 a.m. to 12:00 noon, and 12:30 p.m. to 4:30 p.m. However, at the time claim was made, the claimants were assigned to work two hours overtime per day.

This gang reports for duty at the San Jose Signal Shop every morning and returns to it every night after its tour of duty. On the days in question the members of this gang were required on account of emergency conditions over which they had no control to work in excess of ten hours per day, as follows:

Wilkerson and Berlier worked at Redwood City on March 1 and 12 from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 7:30 p.m. and at Portrero Tower on March 5 from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 7:45 p.m.

Hase worked at Redwood City on March 1 and 12 from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 7:00 p.m. and at Potrero Tower on March 5 from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 8:00 p.m.

Armstrong worked at Redwood City on March 1 from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 8:00 p.m. and at Potrero Tower on March 5 from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 7:45 p.m.

The records indicate Wells worked at Redwood City on March 1 and Potrero Tower on March 5, 1945.

The employes in question submitted the usual expense forms, as follows:

If the petitioner's position in this docket is sustained it would mean that at any time an employe in the performance of his regular work is worked on an overtime basis, an emergency exists so as to bring into operation Rule 22 of the current agreement. That such position is diametrically opposed to the specific language of the rule and the intention of the parties is self-evident. The rule speaks for itself; the language is clear and unambiguous. It provides and contemplates that when such an emergency as is specifically described exists, namely "such as derailments, washouts, snow blockades, fires and slides" and employes are taken from their outfit cars or home stations to the scene of the emergency, and used to perform work in connection with said emergency, they will then be furnished meals and lodgings, where possible, by the carrier.

To accept the petitioner's position in this docket would definitely be tantamount to writing into Rule 22 of the current agreement language that does not appear therein; in other words, writing an entirely new rule not agreed to by the parties. That this Division has the authority to construe and enforce agreements but not to make new rules or to amend existing rules is an established principle.

The carrier asserts that when the claimants were compensated in accordance with the provisions of Rules 5, 10 and 24, as set forth in paragraph 4 of the statement of facts, theye were fully and completely compensated in accordance with the current agreement.

CONCLUSION

The carrier submits that it has conclusively established that the claim in this docket is without basis or merit and therefore, respectfully asserts that it is incumbent upon the Division to deny said claim.

OPINION OF BOARD: The Claimants here are Signalmen and Assistant Signalman with regular working hours from 8:00 a.m. to 12:00 noon and 12:30 p.m. to 4:30 p.m. On the times involved they were assigned to work two hours overtime per day. Track forces were removing old and laying new rails. Claimants were engaged in connecting interlocking and other signal apparatus to the new rails. At the close of the track force day, work still remained to be done by the Claimants in order that the signal apparatus be restored to complete service. To do that work Claimants worked overtime beyond their regular assigned hours. They were permitted a second meal period. The claim is for the cost of those meals.

The claim is based upon Rule 22:

> "In emergency cases, such as derailments, washouts, snow blockades, fires and slides, employes taken aways from their outfits or home stations to work elsewhere will be furnished meals and lodgings, where possible, by the railroad."

Claimants contend that the necessity of completing this work in order that the fuctioning of the signal system be restored and service on the rails not impaired, constituted an emergency requiring the Carrier to pay for meals. In argument in behalf of the Employes there has been cited Awards 118, 587, 588, 706, 769, 935, 989, 1674, 1834, 2372, 2373, 2535, 2658 as dealing with the cost of meals where the cost was allowed. These wards have been examined. They are not similar either on facts or rules involved. A discussion of them is not justifed here.

Likewise in behalf of the Carrier, there has been cited Awards 3, 178, 486, 1231, 1253, 2029, 2372, 2373 and 2535. With the possible exception of Award 83, these awards likewise have no similarity either as to facts or rules involved with the instant claim and will not be discussed here.

In docket SG-3307, Award 3301, we had Rule 22 before us for construction and application. We there said:

"Ordinarily subsistence is a matter for the employe to provide. Effect must be given to all the language of the rule if possible. The Carrier, in Rule 22, does not contract to furnish meals under all circumstances, where the employe is away from his home station. We need not here decide whether the 'where possible' is a limitation applicable to 'lodgings' or 'meals and lodgings'. Neither does the Carrier contract to pay for 'meals and lodgings, where possible' in all cases falling within the broad classification of 'emergency cases'. That obligation is limited to emergency cases 'such as derailments, washouts, snow blockades, fires and slides'. The last quoted language is not all inclusive as to what will be considered emergency cases under the rule but it is descriptive of what was intended to be included in the phrase 'in emergency cases'. The Carrier's obligation under the rule does not go beyond emergency cases that reasonably are comparable with derailments, washouts, snow blockades, fires and slides. It is limted to emergencies of that class."

We need not here decide whether the work involves falls within the broad classification of an emergency. Assuming that it does we are certain that the work here performed does not fall in the classification of emergencies "such as derailments, washouts, snow blockades, fires and slides". It follows that the Carrier is under no contractual obligation to make the payments claimed.

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 the claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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