

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier improperly compensated Water Service Helper John Hay, Danville, Illinois, for the time spent in going from and returning to his headquarters in overtime hours on certain dates in June, July, and August 1947;

(2) That Claimant John Hay be reimbursed for the difference between the compensation received at his pro rata rate and what he should have received at his time and one-half rate because of the improper payment referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: John Hay is a Water Service Helper with Headquarters at Danville, Illinois.

On June 30, 1947 John Hay was required to ride in a Carrier owned truck from Danville, Illinois to Bald Hill, Indiana and return to Danville the same day. The truck left Danville at 4:00 A.M. arriving at Bald Hill about 7:00 A.M., leaving Bald Hill at about 5:30 P.M. arriving at Danville 9:30 P.M. The work at Bald Hill was making repairs to a bulldozer.

Again on July 30, 1947, John Hay rode in a Carrier owned truck from Westville to Danville between the hours of 4:00 P.M. to 4:30 P.M. and again on July 28, 1947, John Hay rode in a Carrier owned truck from Decker, Indiana to Danville between the hours of 4:00 P.M. to 6:30 P.M. He had been delivering some roadway machinery to Floating Steel Gang No. 200.

On August 9, 1947 John Hay rode in a Carrier owned truck from Bald Hill, Indiana to Vincennes, Indiana from 4:00 P.M. to 5:00 P.M. He had been assigned to make repairs to bulldozer.

On August 10, 1947 John Hay rode in a Carrier owned truck from Vincennes to Danville from 6:00 P.M. to 10:30 P.M. He had been engaged in making repairs to bulldozer.

The regularly assigned hours for John Hay are from 7:00 A.M. to 4:00 P.M., one hour lunch period. John Hay was compensated for the time spent in riding in the Carrier's truck as specified above at the pro rata rate of his position.

The employees have contended that John Hay should have been compensated at the time and one-half rate in accordance with Article 4(a) of the

It will be noted that the above communication refers solely to SECTION GANGS. The understanding contained therein was not intended to be applied, nor has it ever been applied to any other class of employees. While the above letter is dated July 28, 1944, it has not heretofore been contended by the organization that it applied to other than section gangs, despite the fact that Water Service Mechanics have had frequent occasion to travel to locations away from their assigned headquarters in motor truck.

For example, the payroll records will show that during the months of February and March, 1947, Water Service Helper with headquarters at Danville was compensated at the pro rata rate for a total of twenty-seven and one-half hours account traveling by motor truck outside the assigned hours at home station. It is Carrier's contention that action of the parties here involved over a period of three years firmly establishes that the understanding set forth in the letter of July 28, 1944, applied only to section gangs.

This understanding was based on conditions peculiar to the class of employees referred to, and was merely a continuation of the accepted practice with respect to daily transportation of these gangs to and from assigned headquarters and the point where they are to work. Section gangs customarily report at headquarters for the section and are transported to and from work location by track motor car. It has not been the practice to consider time spent by section gangs riding on motor cars to and from work location as travel time, within the intent and meaning of Article 6(c).

In 1944 arrangements were made to transport one or two of the larger gangs by company owned bus, rather than by track motor car. It was agreed that the existing practice with respect to compensation for daily travel to and from work location on track motor car would be continued when gangs were transported by bus. This understanding, on its face, was confined to section gangs, was based on conditions peculiar to such gangs, and was not intended to apply to any other class of employees.

It is Carrier's position that the provisions of Article 6(c) are controlling with respect to compensation for travel time outside the assigned hours at home station. Under the circumstances, the instant claim is without merit and we respectfully request that same be declined.

OPINION OF BOARD: The question raised in this case is whether the Claimant, a water service helper, shall be paid at pro rata or time and one-half rate for the time spent in traveling to and from his work before and after his regular hours. Claimant performed work at outlying points during the times stated in the claim. He was transported to and from work in a motor truck. He was compensated at the pro rata rate for the time spent in going and coming from work and after his assigned work period. He claims the overtime rate as provided by Rule 4(a), current Agreement, which provides:

"(a) Time worked preceding or following and continuous with the regular eight (8) hour work period, exclusive of meal period, shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from the starting time of the employee's regular shift. Employees required to work continuously from one regular work period into another shall be paid at the rate of time and one-half for the first sixteen (16) hours work of the second or succeeding twenty-four (24) hour work periods, and thereafter double time until the beginning of the next regular shift or until relieved."

The Carrier contends that the dispute is controlled by Rule 6(c), which states in part:

"(c) Employees, except as provided in Paragraphs (b) and (d), who are required by the direction of the management to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time

during the recognized overtime hours at home station will be paid for at the pro rata rate."

It cannot be questioned that the language used in the two quoted rules is in conflict. We shall harmonize these apparent conflicts by applying the rules in the manner that the past conduct of the parties indicates their meaning to be. It is not disputed that water service employes when traveling by motor car were paid time and one-half for traveling in overtime hours. When trucks were employed to supersede motor cars as a means of transporting these employes, it did not have the effect of changing their existing hours of service or rates of pay. This is in accord with the interpretation given when section laborers were transported by bus in lieu of motor cars. The Carrier then interpreted the rules to mean: "The time required to go from headquarters to point of work and return from point of work to headquarters will be paid for as time worked." In the case of section laborers, the travel by bus was held to be in lieu of travel by motor car and called for the application of the same rules in like manner as before. In the case of this Claimant, the travel by truck was in lieu of travel by motor car and requires the application of the same rules in like manner as before. Claimant was therefore entitled to pay for the travel time here involved as time worked in excess of eight hours.

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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 17th day of October, 1949.