

Award No. 5040

Docket No. MW-4869

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NEW YORK, ONTARIO AND WESTERN RAILWAY
(Raymond L. Gebhardt and Ferdinand J. Sieghardt, Trustees)**

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

(1) That the Carrier violated the Agreement by not compensating the members of Section Crews 5, 7, 9 and 10 of the New York, Ontario and Western Railroad for the period between 8:00 P.M., April 16, 1948 to 7:00 A.M., April 17, 1948 while they were away from their headquarters on an emergency assignment.

(2) That all members of Section Crews 5, 7, 9 and 10 involved in this claim be now compensated for the period referred to in part 1 of this claim at their respective pro rata rates.

EMPLOYEES STATEMENT OF FACTS: On April 16, 1948, Section Crews 5, 7, 9 & 10 were called to report for work by reason of a wreck at Cooks Falls, New York. The employees who were called were transported to Cooks Falls and arrived at approximately 7:00 A.M. They worked from 7:00 A.M. until 8:00 P.M. with a half-hour meal period, at which time they were released from duty. The employees engaged in this work were not returned to their designated assembling point, nor were they returned to their homes as the emergency work for which they were called had not been completed.

They were again directed to resume work at 7:00 A.M. April 17, 1948 and worked continuously until approximately 9:00 P.M., at which time they were returned to their headquarters and released from duty.

In allowing the employees pay for the time they were engaged in this emergency work at Cook Falls, N. Y., the Management did not allow them any pay for the time they were held away from their headquarters between the period 8:00 A.M., April 16 to 7:00 A.M., April 17.

Article 5, Section 10 of the effective agreement reads as follows:

"Beginning and ending of day. Employees' time will start and end at designated assembling point for each class of employees".

The Agreement in effect between the two parties to this dispute, dated December 1, 1940, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

"Temporary or Emergency Travel Service. Employees, except as provided by sections (f) and (i) Article V of Decision No. 501, 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. If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employee from making his regular daily hours at home station. Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed.

"Employees will not be allowed time while traveling in the exercise of seniority rights, or between their homes and designated assembling points, or for other personal reasons."

Sections (f) and (i), Article V of Decision No. 501 of the United States Railroad Labor Board appear as Sections 19 and 23, Article 5, of our current schedule agreement and read as follows:

"(f) Travel time in camp cars.—Employees required by the management to travel on or off their assigned territory in boarding cars will be allowed straight time traveling during regular working hours, and for Sundays and holidays during hours established for work periods on other days."

"(i) Assignments traveling.—Employees temporarily or permanently assigned to duties requiring variable hours, working on or traveling over an assigned territory and away from and out of reach of their regular boarding and lodging places or outfit cars, will provide board and lodging at their own expense and will be allowed time at the rate of 10 hours per day at pro rata rates, and in addition pay for actual time worked in excess of eight hours on the basis provided in these rules, excluding time traveling or waiting. When working at points accessible to regular boarding and lodging places or outfit cars, the provisions of this rule will not apply."

OPINION OF BOARD: On April 16, 1948, Section Crews 5, 7, 9 and 10 were called to work because of a wreck at Cooks Falls, New York. They worked from 7:00 A.M. to 8:00 P.M., at which time they were released from duty. On April 17 they returned to work at 7:00 A.M. and continued in service until 9:00 P.M. at which time they were returned to their headquarters and released from duty. Claimants were properly paid for the time they actually worked. They claim pay at the straight time rate from 8:00 P.M. on April 16 to 7:00 A.M. on April 17, by virtue of Article 5, Section 27, Current Agreement, which provides:

"Temporary or Emergency Travel Service.

Employees, except as provided by sections (f) and (i) Article V of Decision No. 501, 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. If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the

employee from making his regular daily hours at home station. Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed.

Employees will not be allowed time while traveling in the exercise of seniority rights, or between their homes and designated assembling points, or for other personal reasons."

The controlling provision of the rule is that part which states that "If during the time on the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, * * *." It is the contention of the Organization that claimants did not go to bed for five or more hours for the reason that Carrier failed to furnish sleeping facilities and that they were not otherwise available in the vicinity of the wreck. The Carrier asserts that sleeping facilities were afforded and that liability does not therefore accrue for the payment of the time claimed.

Ordinarily an employee's time commences and ends at his designated assembling point by virtue of Article 5, Section 10, Current Agreement. The provision of Article 5, Section 27 relied upon by the Carrier is an exception to the rule. The Carrier states that one Foreman's car, one sleeping car and one cook car were maintained at the scene of the wreck and that sleeping facilities were available. The Organization complains that claimants were required to use beds assigned to and previously used by other employees. Carrier asserts that they were used without protest.

The exact circumstances are not shown by the record. That the sleeping quarters provided were not reasonable under the emergent conditions existing is not shown. Sleeping in the same beds by shifts under emergent conditions may be justifiably required. To sustain a claim, employees must show facts indicating that such requirement was not justified. Claimants have not shown by the weight of the evidence that their claim is valid. The claim must fail for want of proof.

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 Employees involved in this dispute are respectively carrier and employees 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 a violation of the Agreement is not established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1950.