Award No. 5194
Docket No. CL-5150

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violated the Clerks' Agreement when it failed to properly compensate Frank L. Smith, Trucker-Repairman, for the time spent "waiting" away from his permanent headquarters; and,

(b) Frank L. Smith, Trucker-Repairman, shall now be paid for thirty-one (31) hours at one-half his regular rate, $1.13 per hour, for the time spent "waiting" away from his headquarters on May 17 to 22, 1948, both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: Mr. Frank L. Smith occupies position of Trucker-Repairman, Unclaimed Freight Department, Topeka, Kansas. He was instructed to board Train No. 11 at Topeka on Sunday afternoon, May 16, 1948, and proceed to Wichita, Kansas, and begin work at 8:00 A. M. May 17th repairing some thirty-six gas stoves and three refrigerators that had been damaged in transit, and to work only his regular assigned hours, 8:00 A. M. to 5:00 P. M., each day until the job was completed. He arrived at Wichita at approximately 10:00 P. M. May 16th and was compensated for three hours traveling time, Topeka to Wichita, at half-time rate.

In accordance with his instructions, Mr. Smith worked his regular assigned hours, 8:00 A. M. to 5:00 P. M., exclusive of meal period, on May 17, 18, 19, 20, and 21, completing the work for which he was dispatched to Wichita at 5:00 P. M. the 21st. He boarded Train No. 12 at Wichita at 9:50 A. M. Saturday, May 22, arriving in Topeka at approximately 12:45 P. M. the same day, this latter travel time being within the hours of his regular assignment.

During the period Mr. Smith was required to perform service away from his headquarters, May 16 to May 22, 1948, inclusive, he was not compensated for the following "waiting" time:

May 17, 1948	7:00 A. M. to 8:00 A. M.	5:00 P. M. to 10:00 P. M.	6 hours
May 18, 1948	7:00 A. M. to 8:00 A. M.	5:00 P. M. to 10:00 P. M.	6 hours
May 19, 1948	7:00 A. M. to 8:00 A. M.	5:00 P. M. to 10:00 P. M.	6 hours
May 20, 1948	7:00 A. M. to 8:00 A. M.	5:00 P. M. to 10:00 P. M.	6 hours
May 21, 1948	7:00 A. M. to 8:00 A. M.	5:00 P. M. to 10:00 P. M.	6 hours
May 22, 1948	7:00 A. M. to 8:00 A. M.		1 hour
		TOTAL	31 hours

Section 1 of Article IX provides that while 'waiting' outside of the regular work period employes shall be paid at one-half time rates, except that no 'waiting' time will be allowed between the hours of 10:00 P. M. and 7:00 A. M. when lodging is furnished by the Carrier.

This rule contains no ambiguous language and is clear as to its intent and meaning, i. e., that an employe will be compensated for all time while working according to the rules for regular assignment and for all time while waiting outside the regular work period at one-half time rate, specifically excusing the Carrier from payment of 'waiting' time between the hours of 10:00 P. M. and 7:00 A. M. when lodging is furnished."

It will suffice to say as concerns the above, that the Employes' position is without support in the language of the referred-to Article IX, Section 1, for reasons previously stated hereinabove, and that the interpretation the Employes now attempt to place on the term "waiting" as applied to the periods covered by the instant claim is contrary to their previous specifically acknowledged and long adhered-to interpretation of that term, namely, that it covers **"time spent in waiting for train connections at intermediate points on the trip".**

The General Chairman of the Brotherhood also expressed the feeling in discussion of this claim in conference, that the Carrier should have instructed or permitted Mr. Smith to work in excess of his normal eight-hour tour of duty each day in order that he (Smith) could have completed the necessary repair work at Wichita and had been returned to his headquarters at Topeka within the shortest time possible. Aside from the fact that there was no emergency in the actual sense involved, nor a time limit placed on the completion of the work at the away-from-home point, there is moreover no requirement under Article IX, Section 1, relied upon by the Employes as support of their claim, or any other rule of the current Clerks' Agreement that work shall be performed on overtime. Article IX, Section 1, specifically spells out "not less than eight (8) hours" shall be allowed for the day where an employe not regularly assigned to road service is temporarily away from his regular headquarters. As heretofore shown, the complainant Mr. Smith was allowed a minimum day of eight (8) hours on each working day that he was away from his regular headquarters, and in making that payment the Carrier clearly fulfilled its obligation under Article IX, Section 1. Furthermore, no evidence has been presented to the Carrier to show that it was necessary for Mr. Smith to work overtime. Attention is also here directed to Article VII, Section 4, of the current Clerks' Agreement, quoted below, and which expressly provides that no overtime hours will be worked or paid for unless authorized, except in cases of emergency where advance authority is not obtainable:

"Section 4. No overtime hours will be worked or paid for unless authorized, except in cases of emergency where advance authority is not obtainable."

In conclusion, the Carrier asserts that in consideration of all that has been set forth hereinabove, it is incomprehensible how the Employes can in good conscience or grace contend that the Carrier violated Article IX, Section 1, of the current Clerks' Agreement. If ever there was a clear-cut and undisguised attempt to revise an agreement rule through the medium of a claim, this is it. The Board has repeatedly recognized that it is not empowered to do so. A denying award in the instant claim is clearly indicated and respectfully requested.

(Exhibit not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood claims Carrier failed to properly pay claimant Frank L. Smith, Trucker-Repairman, for time spent "waiting" away from his permanent headquarters.

It asks that he be properly compensated for such time in the manner and for the amount as provided by the rules of their effective Agreement.

Claimant was directed by Carrier to go from his headquarters, which is Topeka, Kansas, to Wichita, Kansas, there to begin work on May 17, 1948, at 8:00 A. M., repairing some thirty-six gas stoves and three refrigerators which had been damaged in transit. It directed him to work his regularly assigned hours, that is, from 8:00 A. M. to 5:00 P. M., exclusive of his meal period, until the job was completed. He left Topeka on Sunday afternoon, May 16th. He worked his regularly assigned tour of duty at Wichita on May 17, 18, 19, 20, and 21st. He then left Wichita at 9:50 A. M., Saturday, May 22 and returned to Topeka, arriving there on the same day about 12:45 P. M.

He claims 31 hours of "waiting" time at half his regular rate of $1.13 per hour. The waiting time claimed is one hour from 7:00 A. M. to 8:00 A. M., on May 17, 18, 19, 20, 21 and 22, and 5 hours each day on May 17, 18, 19, 20 and 21 between 5:00 P. M. and 10:00 P. M. Admittedly he has been paid for the time used in connection with going from Topeka to Wichita on May 16 and for returning on May 22.

The question raised by this claim is, is claimant entitled, under Article IX, Section 1, of the parties Agreement, effective October 1, 1942, to be paid this "waiting" time while working in Wichita?

Article IX, Section 1, is as follows:

> "Employes not regularly assigned to road service, who are temporarily required to perform service away from their headquarters, which necessitates their traveling, shall be allowed necessary traveling expenses while away from their headquarters and shall be paid while working, according to rules for regular assignment, with not less than eight (8) hours each day. While waiting or traveling outside of the regular work period they shall be paid at one-half time rates, except that no time will be allowed between 10:00 P. M. and 7:00 A. M. where lodging is furnished."

Carrier contends the second sentence of the rule relates to the payment of time spent in traveling and waiting in going to and from the point to which sent away from the home station, that is, that "waiting" refers to time spent in waiting in connection with traveling and not to the time an employe spends at the away from home headquarters either before or after completing his day's work. The record shows that until this claim was made the rule has always been so construed on the property.

Considering the subject matter of the rule, and the purpose for which it was negotiated, we think there is some uncertainty as to its full meaning. The first part of this rule relates to the payment to these employes of their necessary traveling expenses while away from their home headquarters and the basis of their pay while working. The second part must therefore deal with the subject of their pay for time spent in going to and from the point to which sent away from their home headquarters. That such is true is evidenced by the parties negotiations relating thereto. In view of this uncertainty we think the long continued application thereof on the property evidences its real meaning and is here controlling. Such construction makes the rule fully applicable to the situation it is intended to cover. We find the Carrier did not violate the Agreement.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.