Award No. 5312
Docket No. MW-5233

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) That the Carrier violated the Agreement by requiring B&B Carpenters R. A. Hankins, J. A. Alcorn and M. D. Coats; and B&B Helpers W. G. Coats, H. M. Arnold, G. B. Shinn and N. L. Shinn to remain in their outfit cars over the week end of November 15, 1947, without compensation for such service;

(2) That the claimants named in part (1) be reimbursed in accordance with the overtime rules for services so rendered from 4:30 P. M., Saturday, November 15 to 5:30 A.M., Monday, November 17th, 1947, a total of 24 hours at time and one-half rate and 8 hours at double time rate.

EMPLOYES' STATEMENT OF FACTS: The claimants were, on November 15, 1947, all members of the B&B Gang No. 2, Beardstown Division.

On Saturday, November 15, 1947, these B&B employes completed their assignment at 4:30 P. M., but, prior to the completion of their week's work they were advised by thier Foreman, Mr. B. O. Manring, that they would not be allowed to leave their outfit cars over the week end beginning Novembre 15. Foreman Manring instructed them that these were orders from the Master Carpenter and were for the purpose of insuring the fact that they would be all on the job at 5:30 A. M., Monday, November 17, 1947, since the Master Carpenter had made plans for a special job to be performed at that unusual time on Monday, November 17.

Acting upon these instructions these employes remained with their outfit cars throughout this entire week end. They received no compensation whatever for the time spent in remaining with their outfit cars that week end. The Carrier placed them under pay commencing at 5:30 A. M., Monday, November 17, 1947.

Since these B&B forces are assigned to outfit cars, it is customary and normal for them to make week end trips to their homes each and every week end, reporting back on Monday morning to commence their regular assignments. These employes have claimed they should have been compensated for having been required to remain with their outfit cars during this week end referred to. The Carrier has denied the claim.

to the claim that they "be reimbursed in accordance with the overtime rules for services so rendered." The Overtime rule has application only where work is actually performed before or after and continuous with the regular assigned work period.

As previously stated, claimants were instructed prior to the end of their tour of duty on Saturday, November 15, to report for duty at 5:30 A. M. on Monday, November 17. This requirement, which is a normal characteristic of employment in these classifications, admittedly made it more difficult for them to visit their homes over the weekend, thus creating a condition which the parties anticipated would occasionally occur when the provisions of Rule 36(a) were agreed upon. It reads:

> "Employes will be allowed, when in the judgment of the Management conditions permit, to make week-end trips to their homes."

In this isolated instance, unusual conditions made it somewhat difficult for the employes to make weekend trip to their homes and return in time to commence work at 5:30 A. M. on Monday. They were, therefore, instructed accordingly. The instructions issued are sanctioned by the above-quoted rule. As no service was required or performed, and as the claimants were free to go as they pleased, there is no rule in the collective agreement which would justify payment of the amounts claimed.

Rule 36(a) carries the permissive phrase "when in the judgment of the Management conditions permit". There is no penalty attached to Rule 36(a) that requires the Carrier to compensate employes when conditions will not permit them to make weekend trips to their homes, nor is there anything in Rule 36(a) or any other rule that would compel the Carrier to allow employes to make weekend trips. Whether or not employes are permitted to make weekend trips is a matter that is left to the judgment of Management by the clear and unambiguous language of Rule 36(a). In this instance, because of limited train service, and the requirements of the service which necessitated starting the gang at 5:30 A. M. on Monday, the employes did not got to their homes.

In the light of the clear and precise provisions of Rule 36(a), and the fact that claimant employes were released from duty at the close of their tour of duty at 5:30 P. M. Saturday, and rendered no service until 5:30 A. M. on Monday, the Carrier respectfully submits that claim is completely unsupported by any contractual requirement and should be denied.

OPINION OF BOARD: Claimants, members of B&B Gang No. 2, Beardstown Division, working in outfit cars at Ayers, were not afforded transportation to their homes after completion of work at 4:30 P. M., on Saturday, November 15, 1947. What occurred prior to completion of work on Saturday is a matter on which there is considerable conflict in the record. The Employes assert that Claimants were advised by their foreman that they would be required to remain with their outfit cars to insure that they would be on the job on Monday, November 17, 1947, at 5:30 A. M. The Carrier asserts that they were merely notified by their foreman that they would begin work at 5:30 A. M. Monday, November 17, 1947 in order to complete some special work with a minimum delay to traffic and because train service was not available and the employes did not desire to use other agencies of transportation they decided not to return to their homes for the week-end. It is, however, admitted by the Employes that the foreman did advise Claimants that they would not be required to work on Sunday.

The Employes cite Rule 39 (the Overtime Rule) in support of their claim, contending, in effect, that the time from 4:30 P. M. Saturday to 5:30 A. M. Monday should be treated as time worked because of not being allowed to leave their outfit cars. Carrier contends that Rule 36(a) is applicable in this instance and that unusual conditions made it difficult for the employes

to visit their homes thus creating a situation which was anticipated by the parties in formulating Rule 36(a). That Rule reads as follows:

"Employes will be allowed, when in the judgment of the Management conditions permit, to make week-end trips to their homes."

Inasmuch as the Employes admit that the Claimants were advised that Claimants would not be required to work on Sunday, November 16, 1947, it is a fair inference that they were free to come and go as they pleased so long as they reported for duty at 5:30 A. M. on Monday. During the period from 4:30 P. M. Saturday to that time, therefore, they were not under the direction or control of the Carrier. Nor, during this period, were they held or required to hold themselves in readiness for service in the event of immediate need for their services in an emergency or because of some unusual operating factor, such as the servicing of special trains. Hence, the principles involved in Awards 1070, 2072, 2092, to which the Brotherhood of Maintenance of Way Employes were parties, are not applicable in the instant situation. It is also undeniable, in our opinion, that if the Carrier had supplied the employes with work on Sunday, either for a full eight-hour period or for a part thereof, under the circumstances herein present, there would be no basis for any further claim, if the Claimants were paid in accordance with Rule 41 (Sunday work), or Rule 38 (Calls). In this respect see claim of the Employes in Award 1070 where, despite the fact that the Claimants therein were told to remain at headquarters in readiness for service on January 1 and 2, 1938, the employes did not claim under an overtime rule like Rule 39, in the instant Agreement, but merely claimed eight hours on each day at time and one-half under the rule governing payment for Sunday and Holiday service. Considering these factors it is clear in our opinion that the time elapsing between 4:30 P. M. Saturday and 5:30 A. M. Monday cannot be treated as overtime worked under Rule 39 of the Agreement.

Rule 36 (a) recognizes in its wording and contemplation that situations will arise when in the judgment of Management conditions will not permit of affording employes opportunities to make week-end trips home. It makes no provision for any payment to the employes when such trips are not afforded to them. In the absence of an arbitrary exercise of judgment, which we do not find here, there appears to be no basis for the claim.

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 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 9th day of April, 1951.