

Award No. 5942
Docket No. MW-5997

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Jay S. Parker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MISSOURI PACIFIC RAILROAD COMPANY**

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

(1) That the Carrier violated the effective agreement when it required Water Service Repairman H. L. Little and Water Service Helpers W. V. Bloomer and Raymond S. Schnieders to work and travel by truck on hours outside of their regular assigned work period between August 7, 1950 and September 26, 1950, both dates inclusive, and compensated them at their respective straight time rate of pay;

(2) That the following employees be paid the difference between what they received at their respective straight time rates of pay and what they should have received at their respective over-time rates of pay for the number of hours and dates as listed below:

Water Service Repairman H. L. Little:

2 hours on August 7, 1950 (5:30 A. M. to 7:30 A. M.)
1½ hours on August 8, 1950 (4:30 P. M. to 6:00 P. M.)

Water Service Helper W. V. Bloomer:

2 hours on August 7, 1950 (5:30 A. M. to 7:30 A. M.)
2½ hours on August 8, 1950 (4:30 P. M. to 7:00 P. M.)

Water Service Helper Raymond S. Schnieders:

2 hours on August 7, 1950 (5:30 A. M. to 7:30 A. M.)
2½ hours on August 8, 1950 (4:30 P. M. to 7:00 P. M.)
½ hours on August 9, 1950 (4:30 P. M. to 5:00 P. M.)
2½ hours on August 11, 1950 (4:30 P. M. to 7:00 P. M.)
1½ hours on August 16, 1950 (6:00 A. M. to 7:30 A. M.)
1½ hours on September 26, 1950 (4:30 P. M. to 6:00 P. M.)

EMPLOYEES' STATEMENT OF FACTS: Water Service Repairman H. L. Little and Water Service Helpers W. V. Bloomer and Raymond S. Schnieders were working on positions with headquarters at Jefferson City; regular

OPINION OF BOARD: All Claimants herein involved had headquarters at Jefferson City, Missouri; assigned hours 7:30 A.M. to 4:30 P.M. with meal period 12 noon to 1:00 P.M., and were regularly assigned hourly rated employees subject to the provisions of the current Maintenance of Way Agreement.

The record discloses that during the involved periods of time the Claimants worked their assigned hours and in addition were engaged as follows:

"Water Service Repairman H. L. Little

"August 7, 1950:

5:30 A.M. to 5:45 A.M.—load tools into truck at headquarters.

5:45 A.M. to 7:30 A.M.—travel by truck to Washington, Mo. to make repairs to water line.

August 8, 1950:

4:30 P.M. to 7:00 P.M.—travel by truck to headquarters after cleaning coal chute at Washington, Mo. No tools or material handled.

(Note: Our records show this man traveled 4:30 P.M. to 7:00 P.M. instead of 4:30 P.M. to 6:00 P.M. as shown by the Employees.)

"Water Service Helper W. V. Bloomer

"August 7, 1950:

5:30 A.M. to 5:45 A.M.—load tools into truck at headquarters.

5:45 A.M. to 7:30 A.M.—travel by truck to Washington, Mo. to make repairs to water line.

August 8, 1950:

4:30 P.M. to 7:00 P.M.—travel by truck to headquarters after cleaning coal chute at Washington, Mo. No tools or material handled.

"Water Service Helper R. S. Schneiders

"August 7, 1950:

5:30 A.M. to 5:45 A.M.—load tools into truck at headquarters.

5:45 A.M. to 7:30 A.M.—travel by truck to Pacific, Mo. to make repairs to toilets.

August 8, 1950:

4:30 P.M. to 7:00 P.M.—travel by truck to headquarters after cleaning coal chute at Washington, Mo. No tools or material handled.

August 9, 1950:

4:30 P.M. to 5:00 P.M.—travel by truck to headquarters after unloading car of lime at Blackwater, Mo. No tools or material handled.

August 11, 1950:

4:30 P.M. to 7:00 P.M.—travel by truck to headquarters after making repairs to water line at Washington, Mo. No tools or material handled.

August 16, 1950:

6:00 A. M. to 6:30 A. M.—load tools and material into truck at headquarters.

6:30 A. M. to 7:30 A. M.—travel by truck to J J Siding, Mo. to repair engine at pump station.

“September 26, 1950:

4:30 P. M. to 6:00 P. M.—travel by truck to headquarters after unloading chemicals at treating plant at Blackwater, Mo. No tools or material handled.”

Summarily stated, since it is conceded they have been paid at the pro rata rate, the sole issue involved in this case as presented is whether the Claimants, a water service repair man and two water service helpers, are entitled to be paid at the overtime rate for time spent while being transported by a motor truck, operated by an employee not here involved, to and from work, assigned at the outlying points hereinbefore mentioned.

Primarily the Organization bases its case on rules of the Agreement pertaining to payment of overtime, particularly Rule 14, Section 11 (f-1) providing that “Time worked preceding or following and continuous with a regular assigned eight (8) hour work period shall be computed on the actual minute basis and paid for at time and one-half rate” and Section 11 (g) of the same rule which is to the same general effect.

The Carrier bases its defense to the claim on Rule 25 which, so far as here pertinent, reads:

“Employees in temporary or emergency service, except as provided in Rule 21, 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.**” (Emphasis supplied)

At the outset the Organization contends the last quoted rule has no application because Claimants were not in temporary or emergency service. Upon examination of the record it appears Carrier maintains no special force for the performance of temporary or emergency work and that the parties have always interpreted the Agreement to mean that water service employees could perform work of the type here involved at outlying points if and when required. Under such circumstances we think the involved employees must be regarded as engaged in temporary if not emergency service when performing work at outlying points and therefore come within the scope of Rule 25.

Reverting again to rules relied on by the parties it must be conceded the overtime rules of the Agreement above mentioned are general in nature whereas Rule 25 must be classified as special. Likewise it cannot be questioned the language used in such rules is in conflict. This, under all well established rules of contractual construction, means that Rule 25 is to be regarded as controlling with respect to matters pertaining to the particular subject covered by its terms.

In view of what has been stated in the two preceding paragraphs it seems clear the language of Rule 25 providing travel or waiting time during the recognized overtime hours at home station will be paid for at the pro rata rate must be given force and effect unless other rules of the Agreement or past practice make such language inapplicable. Our examination of the record discloses no rule which has that effect. Conceding, as the Organization insists, that the overtime rules on which it relies provide

work or service performed preceding or following and continuous with a regular assigned eight-hour work period will be paid for at the overtime rate and that travel time has been held to be work or service, it does not follow that such traveling time is to be paid for at the punitive rate. By precise, unequivocal and express terms of another and special rule (25) of the Agreement travel time is made payable at the pro rata rate. Therefore, until changed through the medium of negotiation, we are compelled, under facts and circumstances as are here involved, to give such rule the import and meaning its clear and concise terms require and hold that time spent in traveling during the overtime hours recognized at an employee's home station is payable at straight time. Nor do we find anything in the record with respect to past practice warranting a contrary conclusion. Indeed, under the facts as therein presented, we are impelled to hold that ever since the Carrier commenced to use trucks as a means of transportation for water service employes the parties have interpreted the Agreement as permitting payment of the pro rata rate both prior to and after, as well as during regular assigned hours.

In attempting to forestall the foregoing conclusion the Organization places great weight on our Awards 4581 and 4850. The Award first mentioned recognizes that rules similar to the ones here involved are conflicting and that under such circumstances the question whether traveling time is payable at the pro rata or overtime rate must be determined from past practice. Indeed the ground for sustaining the claim in that case was that the record disclosed past practice was to pay the punitive rate. Here, as we have indicated, past practice is to the contrary. It follows such Award does not uphold the Organization's position. Award 4850 specifically points out the issue here involved was not there presented or considered. Even so that fact does not preclude defense of the instant claim on the ground relied on by the Carrier. Just what our decision in Award 4850 would have been if the issue had been raised cannot be here determined. In any event, since it was not raised such Award is clearly distinguishable and cannot be regarded as a controlling precedent. Award 3499 is closer in point and supports and sustains our conclusion the facts and circumstances of this case bring it squarely within the scope and purview of Rule 25. The result is the claim must be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1952.