Award No. 6611

Docket No. SG-6536

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America, on the Chicago, Rock Island and Pacific Railroad that Signalman W. E. Werst and Helper E. Foster be paid seven hours each at their respective current straight-time hourly rates of pay, while waiting in camp-cars at Saginaw, Texas, on their rest day, Saturday, September 8, 1951.

EMPLOYES' STATEMENT OF FACTS: The determination of the claim as presented rests upon the proper application of Rule 22 of the July 1, 1938 "Signalmen's—Rock Island" working agreement, as revised August 2, 1950, to conform with the Chicago, Ill., March 19, 1949, shorter work week agreement.

For ready reference Rule 22 is quoted:

"Rule 22.

Employes regularly assigned to camp cars and traveling by direction of the management in such cars, will be allowed straight time for traveling or waiting during regular working hours and for rest days and holidays during hours established for work periods on other days. When traveling in camp cars between the end of the regular hours of one day and the beginning of regular hours of the following day, no time will be allowed."

The claimants were, at the time this claim originated, regularly assigned to a camp-car gang with regular assigned working hours from 8:00 A. M. to 5:00 P. M., one hour off for lunch, five days a week, Monday through Friday, —rest days, Saturday and Sunday.

The camp-cars to which the claimants were assigned were billed out about 9:30 P. M. Friday, September 7, 1951, from Saginaw, Texas, and were

POSITION OF CARRIER: These claimants started actual traveling in their camp cars at 4:20 P. M., September 8, 1951, a rest day for them. Their work day assigned hours ended at 5:00 P. M., September 7, 1951, and they were released at end of tour of duty.

The only traveling by them on September 8, 1951, during hours established for work period on other days, was between 4:20 P. M. and 5:00 P. M., and payment was made therefore, (20 minutes additional being erroneously allowed) in accordance with Rule 24 of the Signalmen's Agreement, reading:

> "RULE 24. TRAVEL IN CAMP CARS. Employes regularly assigned to camp cars and traveling by direction of the management in such cars, will be allowed straight time for traveling or waiting during regular working hours and for rest days and holidays during hours established for work periods on other days. When traveling in camp cars between the end of the regular hours of one day and the beginning of regular hours of the following day, no time will be allowed."

This rule provides for payment while traveling only during regular assigned hours and on rest days only during hours established for work periods on other days. The employes did not travel on September 8, 1951 between 8:00 A. M. and 4:20 P. M., and therefore, are not entitled to any payment under Rule 24 during that period.

Rule 24, as designated by its title, is a straight travel rule and the reference to "waiting" applies only after the start of travel, i.e., waiting enroute for connections, delays, enroute, etc. In the instant case, they first started to move in camp cars at 4:20 P. M., September 8, 1951.

The employes cannot show where any payment has been made in the past as they now contend.

Under the evidence recited above, their claim should be denied.

It is hereby affirmed that all data herein contained is, in substance, known to the Organization and is hereby made a part of the question in dispute.

OPINION OF BOARD: We think the real reason for the claim in this case is the Carrier's error in seeking to rely on Rule 24 of the Agreement effective as of July 1, 1952, which date is subsequent to the date of the claim (September 8, 1951).

While it is true that Rule 24 in the 1952 Agreement is identical in language with Rule 22 of the 1938 Agreement except for the title, "Travel in Camp Cars," as revised in the 40-Hour Week Agreement signed at Chicago on August 2, 1950, it is understandable why the Carrier would like us to tie the case to the 1952 Agreement which provides in Rule 23, "The Term 'traveling or waiting,' as herein used, means traveling on trains or waiting for trains **while en route.**" (Emphasis supplied)

Some question might arise as to whether the word "herein" in the above quotation is limited to Rule 23 or could with propriety modify all the Rules 22 to 24 of the 1952 Agreement because the caption to Rule 22 is "Pay—Traveling and Waiting." Presumably the Carrier adopts the latter theory, because in its ex parte submission, it says, "Rule 24, as designated by its title, (as already indicated there was no such title to Rule 22 at the time this claim arose) is a straight travel rule and the reference to 'waiting' applies only after the start of travel, i.e., waiting en route for connections,

delays en route, etc." It is obvious that the Carrier must revert to Rule 23 quoted above to pick up the word "en route" because that is the only place the word appears in all three rules.

In this connection, it is interesting to note that the dictionary (Webster's New Collegiate, 1949 Ed.) definition of en route is "On or along the way," which could indicate inclusion of both terminals for the purpose of computing "waiting" time, a point we need not decide in this case.

Because of the use of the word "or," in the phrase "traveling or waiting," the rule could read for the purposes of this claim that these employes "will be allowed straight time for waiting during regular working hours, etc."

Carrier relies upon Award 6065 where a very similar rule was involved and the Carrier was successful because the clause relied upon read "When traveling in outfit cars etc." The words, "or waiting," were omitted from that portion of the rule, and the employes were seeking to recover "for waiting" en route under that rule. But the hurdle that the employes could not get over in that case was ". . . the only time allowed will be for actual time traveling, etc." (Underscoring by Carrier) The Board said that because of the language, "actual time traveling," being in the rule, the claim would have to be denied. If that limiting phrase was in the present rule we would have to deny the claim.

Another hurdle which the Claimants make in this case is our Award 5977, where again a somewhat similar rule was involved and the phrase, "Travel or waiting time," was in the rule. But in that case Rule 2 (which included the quoted language) was qualified by reference to Rule 1 which limited time to "time traveling" "on or off their assigned territory." (Emphasis supplied)

The Board said in that award, "While the rules may seem harsh or inequitable, this Board cannot rewrite the rules." So it is in this case, except that the seeming harshness militates against the Carrier.

It is admitted in this case that the Carrier paid for part of the time claimed, but seeks to excuse itself by saying it misinterpreted the rule. We think that is a fair statement because it was less than a year after this claim arose that the Carrier was successful in negotiating the 1952 Agreement which corrected the situation that undoubtedly gave rise to the misinterpretation. (Carrier could have been misled, or at least justifiedly confused by our award in 5157). But whatever the reason it should not be held against the Employes. (Awards 2350, 6538)

The Carrier complains that the employes are assuming an inconsistent position with that they took in Award 6065. There is nothing new about that. Life is full of inconsistencies, and the work on the Board is full of them, if for no other reason that frequently the agreements themselves are inconsistent; it just happens that this one must be resolved in favor of the employes.

Finally, the Carrier stresses the fact that the employes are indefinite about the time their car was billed. If the Employes were trying to recover for anything beyond their usual starting time that might become important, but such is not the case.

The claim should be sustained.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.

DISSENT TO AWARD NO. 6611, DOCKET NO. SG-5635

This case turned upon a rule providing for compensation at straight time rates of pay "for traveling or waiting during regular working hours and for Sundays and holidays during hours established for work periods on other days." The facts were that the camp cars, to which claimants were assigned, were "billed out" sometime after work Friday evening but were not actually moved until 4:00 o'clock Saturday afternoon. They arrived at the next point of work sometime after 5:00 o'clock on Sunday. The employes were paid, beginning with the time of movement on Saturday, for all traveling or waiting during hours established for work periods on regular work days.

The award is in error in holding that compensation should have begun at 8:00 A. M. on Saturday, thus construing the rule as meaning that all time in advance of the time the cars are moved is "waiting" time. The specific error in this holding is that it does not permit of establishing any particular time as the beginning of "waiting."

It is a matter of common railroad practices that arrangements are made for the movement of camp cars sometime in advance of their actual departure. Their movement is then made consistent with the kind and classification of trains operating in the direction the cars are to take. It was pointed out in this case that after arrangements are made on Friday to move camp cars to the next job location to commence work the following week, it is highly conceivable that operating conditions associated with weekend traffic may not permit actual movement of camp cars until the beginning of the week and that no payment had ever been made or claimed for the 16 hours on the intervening Saturday and Sunday as "waiting" time under this rule.

The reasoning in this Opinion is reduced to its own underlying absurdity by the statement that "the rule could read for the purposes of this claim that these employes 'will be allowed straight time for waiting during regular working hours, etc.'." It becomes clear, then, that if the cars had been billed out on Thursday night, this referee would have paid the employes one day for working on Friday and one day for "waiting" during the same hours on

Friday, and 7 hours for "waiting" on Saturday, and actual travel time thereafter during regular hours until arrival at destination. With the award thus explaining itself, it will be seen that it rejects the sensible for the imperceptible construction.

We dissent.

/s/ E. T. Horsley

/s/ R. M. Butler

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ C. P. Dugan