

Award No. 6651
Docket No. MW-6556

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the effective agreement by failing to compensate Bridge and Building Foreman J. E. Foster and Bridge and Building Mechanics L. W. Pike, S. G. Admire, J. W. Henderson, F. L. Leub, C. C. Wright, J. D. Adkins, J. E. Umphrey and C. L. Russell, at their respective time and one-half rates for work performed during the period 3:00 A.M. to 6:00 A.M., and at double time rates during the period 12:00 Midnight to 3:00 A.M. on October 7 and 8, 1951, while performing emergency service at Bridge D-791-9;

(2) The claimants listed in part (1) of this claim be allowed the difference between what they were paid at their respective straight time rates of pay and what they should have been paid at their respective time and one-half and double time rates of pay for the services referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimants are regularly assigned to Bridge and Building Gang No. 1, with headquarters at Denison, Texas. They are assigned to a work week of Monday through Friday, with Saturdays and Sundays as rest days. Their regular assigned hours are from 8:00 A.M. to 5:00 P.M., which includes a one-hour meal period.

On Saturday, October 6, 1951, Bridge and Building Foreman Foster was notified that Bridge D-791-9 had been destroyed by fire. He was directed to assemble his gang and depart from Denison at 3:00 A.M. on October 7, to assist in rebuilding this bridge.

Foreman Foster called and instructed Bridge and Building Mechanics L. W. Pike and S. G. Admire to report at their headquarters at 11:00 P.M. to make repairs to necessary tools and to thereafter load a full complement of Bridge and Building tools in a three-quarter ton truck. They were engaged in this service until the arrival of Foreman Foster and the remainder of the gang, at which time they departed from their headquarters at 3:00 A.M. by truck, arriving at Bridge D-791-9 at 6:00 A.M. They worked continuously until traffic was restored, and at 12:00 Midnight, departed by truck, arriving at their headquarters at 3:00 A.M., October 8, 1951.

time worked by changing his Statement of Claim and alleged Statement of Facts to fit the rules he wanted to apply as he is attempting to do here. These men were not required to perform any work and have not shown that they were required to perform any work in traveling from their home station at Denison to Bridge D-791-9 and return on October 7-8, 1951. Payment under the travel time rule, Article 12, Rule 2, is therefore the only payment authorized under the Agreement. Payment under Rule 2, Article 9, and Rule 1, Article 11, for traveling in motor truck is not therefore time worked within the intent and meaning of those rules and is not authorized by the agreement.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The facts, in brief, presented in this claim are as follows: Claimants are regularly assigned to Bridge and Building Gang No. 1, headquarters at Denison, Texas, assigned hours 8:00 A.M. to 5:00 P.M., one hour meal period, rest days Saturdays and Sundays. On Saturday, October 6, 1951, Foreman Foster was notified that Bridge D-791-9 had been destroyed by fire and he was directed to assemble his gang at Denison, depart from that point at 3:00 A.M., October 7th to assist in the rebuilding of the bridge. The claim arises as to proper method of payment during this assignment and Claimants contend the Agreement was violated in that for part of time in question they were entitled to time and one-half and in other instances double time.

Petitioners cite Article 10, Section 2, paragraph (a) as follows:

"Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days * * *"

and Rule 1 of Article 11 "Called or Notified" rule and Rule 2 of Article 9, also Award 4581 and Award 5756 involving the parties to this dispute. Award 6418 is also cited on the proposition that the men involved there were handling company equipment and were on the alert as they might be stopped in transit and put to work. Likewise Award 6514 where it is contended the same principle was reaffirmed.

On behalf of Respondent Carrier it is urged that Article 12 of the Agreement controls the situation here presented and that the single question involved is whether travel time should be compensated for at the pro rata rate or is subject to overtime and double time compensation rules. Numerous Awards are also cited on the proposition that travel is not considered to constitute time worked. See Awards 6400, 2304, 2309.

In the Agreement under consideration a specific rule appears, Article 12, which deals with the matter here in controversy, "Travel Time," which we deem to control in the instant case and it provides for the method of payment made by Carrier to Claimants. It is the general rule in construing of all contracts that a specific provision dealing with a certain condition will prevail over other rules dealing with certain phases of the situation in a general manner and relating to overall matters which may arise. Under the provisions of Article 12 proper compensation was paid and we find no violation of 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 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 the Agreement was not violated.

AWARD

Claims denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of May, 1954.