Award No. 6982
Docket No. CL-6991

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(1) The Carrier has violated and continues to violate the rules of the Clerks' Agreement by its failure to properly compensate Mr. E. M. Hawkins, and all other employes who have worked Relief Position No. 3 at Oakland subsequent to September 1, 1949, for waiting time at Stockton, California, when going to and returning from the position of Storekeeper at that point, on which they relieved two days each week.

(2) Mr. E. M. Hawkins and other employes affected shall now be compensated for travel and waiting time, as well as away from home expense and automobile allowance, to which they are entitled, less the allowance previously made for travel time.

EMPLOYES' STATEMENT OF FACTS: As a result of the Chicago Agreement of March 19, 1949, several disputes arose on this property with respect to the wording to be incorporated in some of our Rules in order to comply with the intent of that agreement. One of such disputes involved the question of how the agreement should be revised to conform with the intent of Article II, Section 3 (g) (Travel Time). As a result of this dispute the matter was referred to the Forty-Hour Week Committee which rendered its Decision No. 6, and as a result thereof, Rule 23 (d), hereinafter quoted, was adopted through Supplemental Agreement dated August 8, 1950, effective September 1, 1949.

Because of the inauguration of the 40-hour week, effective September 1, 1949, a Relief Position was created and advertised in Clerks' Circular No. 17 dated Sept. 1, 1949, (Employes' Exhibit "A") to perform relief service as follows:

> Sat. and Sun., 8:00 A. M. to 4:30 P. M. with half hour meal period 12:00 Noon to 12:30 P. M. as Storekeeper, Oakland, rate $14.94 per day.
>
> Monday, 4:00 P. M. to 12:00 midnight as Section Stockman, Oakland C. Z. Store, rate $12.97 per day.
>
> Tuesday and Wednesday—Rest Days.

Clerk Hawkins traveled to Stockton by Train No. 2 and has been compensated for travel time and waiting time from arrival at Stockton until he went to work at 7:30 A. M. the following morning, less overpayment of expenses under Paragraph 5 of Rule 23 (d).

The other claimants did not use the authorized means of travel but instead drove their private automobiles, arriving Stockton about 7:30 A. M. on Thursday and departing Friday after completion of work.

In attempting to reach some settlement of this dispute, several compromises were discussed in conferences but the final disagreement is expressed by the General Chairman in his letter dated July 21, 1953, as follows:

> "For this reason I declined to accept the offers made, for it is our position that when transportation is made available by the Carrier, the failure of the employe to use that transportation does not deprive him of the waiting or travel time involved had it been used."

Employes have been allowed travel time but it is Carrier's position an employe is entitled to payment for only actual waiting time and not automatically entitled to payment for such time when he does no waiting.

Rule 23 (d), Paragraph 3, states, "If the time consumed in **actual** travel, including waiting time enroute, from the headquarters point to the work locations, together with necessary time spent waiting for the employe's shift to start . . .".

Nothing in the Rule provides any payment for constructive waiting time; that is, "had he waited". A different method of transportation was chosen unilaterally by the employe for his own convenience and he thus eliminated any waiting time at Stockton.

The claim here presented also reads to cover waiting time "returning" from position on which they relieved at Stockton. It is Carrier's understanding this portion of the claim had been settled in conference and that no disagreement exists on this issue. Employes were allowed expenses on Fridays, including lodgings when such was used on Friday night, and travel time. Such employes were unable to return to their headquarters at Oakland on Friday, and under Paragraph 5, Rule 23 (d), are only entitled to expenses and time actually working or traveling. Again, employes leaving by automobile upon completion of work on Friday did not have any waiting time for transportation.

The claim here presented includes, "with interest thereon at the rate of 6% per annum from September 1, 1949 . . .". There is no provision of the current Agreement providing for "interest" much less the "rate of 6%". The General Chairman offers no Schedule Rule to support his claim in this respect. Under the Railway Labor Act, your Honorable Board is limited to disputes growing out of grievances, or out of interpretation or application of agreements, and this issue can only be considered a request for a new Rule which is a matter of negotiation beyond the jurisdiction of your Board.

You are urged to deny the claim here presented for non-existent waiting time, for any waiting time returning to headquarters, and for the demand for interest. There is no merit under the current Agreement for the demand for arbitrary payment of waiting time when the employe does not actually "wait," or for any interest payment whatsoever.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is for three separate allowances, (1) travel and waiting time, (2) away from home expense and (3) automobile allowance under different sections of Rule 23 (d).

Subsection 3 of that rule governs travel and waiting time allowances. It reads as follows:

> "If the time consumed in actual travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employe's shift to start, exceeds one hour and thirty minutes, or if on completion of his shift necessary time spent waiting for transportation, plus the time of travel, including waiting time enroute necessary to return to his headquarters point or to the next work location, exceeds one hour and thirty minutes, then the excess over one hour and thirty minutes in each case shall be paid for as working time at the straight-time rate of the job to which traveled."

This claim arose because subsequent to September 23, 1949 the Carrier provided rail and bus transportation and designated the trains and/or buses to be used between Oakland and Stockton, but some occupants of the position involved chose to use their own automobile instead of the transportation provided by the Carrier. It is here contended that such employes should be paid the same travel and waiting time as would accrue if they used the transportation provided by the Carrier. It will be noted that the rule provides pay for "actual" travel time and "necessary" waiting time so it does not support that contention.

The employe is entitled under the rule to actual travel time when using his automobile but, since there could then be no "necessary" waiting time, and since the rule does not provide pay for constructive waiting time, he is not then entitled to be paid for any waiting time.

Subsection 5 of Rule 23(d) governs payment for away from home expense. It reads as follows:

> "When such employes are unable to return to their headquarters on any day, they shall be entitled, in addition to the allowance under paragraphs 3 and 4 of this rule, to reimbursement for actual necessary costs of lodging and two meals per day while away from headquarters, with a maximum of four dollars per day; i.e., the 24-hour period following the time when the employes' last shift began, but on such days, they shall not be paid for any hours after their assigned hours unless actually working or traveling to another work location. Accommodations on a sleeper may be furnished in lieu of the lodging above provided for, and time spent on the sleeper will not be considered travel."

First it is contended that employes who chose to drive their own automobile from Oakland to Stockton on each of the days they performed relief at that point are entitled to away from home expense allowance. The rule provides for reimbursement for "actual necessary" expense so it does not support that contention.

Next it is contended that meal and lodging expense is payable for two days but at all times there is only one 24 hour period, following the time when the employe's last shift began, involved in this assignment so the rule does not support that contention.

Finally it appears that the rule was agreed upon on August 8, 1950 but made effective September 1, 1949, and that the Carrier declined to reimburse employes for meals and lodging except upon production of receipts for such expenses. Requiring receipts after notice is perfectly proper but there is no sound basis for requiring them retroactively. In accordance with the rule employes should be reimbursed for any actual necessary costs for that retroactive period.

Subsection 4 of Rule 23(d) governs automobile and other transportation allowances. It reads as follows:

"Where an employe is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located, the carrier will either provide transportation without charge, or reimburse the employe for such transportation costs. ('Transportation' means travel by rail, bus or private automobile, and 'transportation costs' means the established passenger fare or automobile mileage allowance where automobile is used.)"

Subsequent to September 23, 1949 the Carrier provided transportation without charge and since the rule is in the alternative no claim for automobile allowance is valid thereafter. However for the period of time prior to that date the rule clearly requires the Carrier to reimburse employes who used their own private automobile on the basis of the established mileage allowance.

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 violated to the extent stated in the Opinion.

AWARD

Claim sustained to the extent stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.