Award No. 7598
Docket No. MS-6661

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

(1) That the Carrier violated the effective agreement when it required F. J. Stella, San Bernardino Ice Plant, to travel from San Bernardino to Hobart, California and return without pay for traveling, and/or waiting during the hours preceding and after his regular bulletin assignment on Sept. 7, 1951.

F. J. Stella traveled one (1) hour and 15 minutes prior to his assigned working hours, he waited and traveled four (4) hours and 20 minutes after his regular assignment without pay.

(2) That F. J. Stella hereinafter referred to as the claimant, be paid for all time consumed in waiting and traveling for all time preceding and after his regular assignment at pro-rata rate.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated September 1, 1947, amended September 1, 1949, known as the Ice Plants Agreement. Copy of which is on file with the Board, and is by reference hereby made a part of Statement of Facts.

On or about Thursday, September 6, 1951, claimant was instructed by the management of the San Bernardino Ice Plant to go to the Hobart California Ice Plant the following day September 7, 1951, to depart at 5:45 A. M., perform whatever work the carrier required, and then to return to his home point, which was San Bernardino, transportation would be furnished him.

Accordingly, claimant departed from San Bernardino, California, at 5:45 A. M., arrived at the Hobart Plant 7:30 A. M., a distance of about 65 miles, claimant worked from 7:30 A. M. to 11:00 A. M., from 11:00 A. M. to 11:30 A. M. he was off work on his lunch period, he worked from 11:30 A. M. to 3:30 P. M., completing his work.

The Carrier transported him to the Los Angeles Union Passenger Depot from which depot he departed at 5:30 P. M. arriving at San Bernardino, 7:50 P. M.

the claimant F. J. Stella involved in the instant dispute, **and all without prior conmplaint or claim from either the Employes or their representatives.**

In addition to recognizing that the conduct of the parties to an Agreement is often as expressive of intention as the written language of the rules (Awards 2436, 3603, 4104, 4464, 5079, 6076 and others) the Third Division has also consistently recognized and held that:

> (1) Organizations certified as the duly accredited representatives of employes are chargeable with knowledge of the content of Agreement rules **and existing practices thereunder** (Awards 1609, 5404, 5416, 5884 and others) and
>
> (2) to permit a practice or interpretation, later urged as objectionable, to continue unchanged through the process of negotiation and adoption of new Agreements, is evidence of a mutuality in the continuation of such practice or interpretation. (Awards 2436, 3603, 4791, 5079 and others).

It is, moreover, obvious that what the Employes are seeking through the medium of an award in the instant dispute is something that the applicable rule **does not grant;** hence, their claim amounts to a request for a revision of Article VII, Section 15 of the Ice Plants Agreement. Since the Board has on so many occasions in its many awards acknowledged that it does not have the power to grant new rules or amend existing rules, it is needless to go into any lengthy discussion other than to make reference to only a few awards, among the very many, in which the Board has enunciated and adhered to that principle. See Third Division Awards Nos. 1567, 1568, 1606, 1609, 3421, 4050 and others.

In conclusion, the Carrier respectfully reasserts that the instant dispute is entirely without schedule support, and should, for the reasons set forth herein, be denied in its entirety.

The Carrier is uninformed as to the arguments which the organization will advance in its ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the organization's ex parte submission or any subsequent oral argument or briefs presented by the organization in this dispute.

All that is contained herein has been both known and available to the Employes or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute here hinges entirely upon the proper interpretation of Article VII, Section 15 of the Agreement between the parties. That Section reads:

> "Employes temporarily working away from their home plant shall be paid while working according to requirements at plant where temporarily assigned with not less than eight (8) hours each day at their regular rate of pay; also, when waiting or traveling they shall receive straight time at pro rata rate for regularly assigned working hours at home plant. . . ."

Claimant's home plant was San Bernardino; his regularly assigned hours were 7 A. M.—3:30 P. M. On September 7, 1951, he was assigned to perform some special work at Carrier's Hobart Ice Plant in Los Angeles. He was transported by company car, leaving San Bernardino at 5:45 A. M., arriving Hobart 7:30 A. M. He worked at Hobart from 7:30 A. M. to 3:30 P. M., was taken by company car to the Los Angeles depot, caught a 5:30 P. M. train and arrived San Bernardino at 7:50 P. M.

He was paid eight hours at pro rata rate for September 7. The claim is for compensation at pro rata rate for the traveling and waiting time prior to 7 A. M. and after 3:30 P. M.

Claimant contends the rule provides that employes on temporary assignment away from home plant shall be paid for all time traveling and waiting; that the phrase "for regularly assigned working hours at home plant" modifies the word "rate" and merely describes the rate at which they shall be paid for such time. Carrier contends that the quoted phrase modifies the word "time" and thus limits the waiting and traveling for which employes shall be paid to that which occurs during their regularly assigned hours at home plant.

Carrier asserts that the practice has long been to pay according to its interpretation, and that no protests have been made although several new agreements were negotiated during this period. Claimant does not admit that the rule has been so interpreted. Carrier submits no evidence of any specific applications of the rule, but rests on a general assertion. On this state of the record, we cannot make a finding as to the past practice of the parties, but must rely for our decision on the language of the rule itself.

While it may be said that there is some ambiguity in the phrasing, we think it clear, both from the placement of the phrase in question in the sentence and the general intention evidenced by the rule, that claimant's interpretation is the correct one. The phrase "for regularly assigned working hours at home plant" follow immediately after the word "rate", and the normal interpretation is that it modifies that word rather than the word "time" which appears earlier in the sentence and which it could have been made to follow had the parties so desired. It can almost be generally assumed that the normal intention in a collective bargaining agreement is that employes shall be paid for time spent by them at the direction of the employer during regular working hours, whether in travel or waiting or otherwise. The fact that here there is a special reference to travel and waiting time, in addition to a clause covering working time, supports the inference that travel and waiting time outside of working hours is covered by the rule.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1957.