

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 on September 10, 1951, it required N. Maki, Maintenance Foreman, Needles, California Ice Plant to travel from Needles, California to Winslow, Arizona a distance of 291 miles, between the hours of 2:35 A. M. P.S.T. and 12:30 P. M. M.S.T. without proper compensation.

(2) That N. Maki, hereinafter referred to as the claimant, be paid for all time involved between the hours of 2:35 A. M. P.S.T. and 12:30 P. M., M.S.T. spent in traveling and/or waiting, at pro-rata rate, less any such hours for which compensation may have been paid him.

EMPLOYEES' 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 this Statement of Facts.

On or about September 9, 1951, Mr. N. Maki was instructed by the plant Superintendent at Needles, California to go to Winslow, Arizona September 10, 1951 to perform certain work, he was to ride A.T. & S.F. train No. 4 scheduled to depart from Needles, California at 2:35 A. M., he was to report for duty at the Winslow plant at 4:30 P. M., September 10, 1951, working until 1:00 A. M., September 11, 1951.

Mr. Maki complied with these instructions, departing from Needles, California at 2:35 A. M., P.S.T. arriving at Winslow, Arizona at 12:30 P. M., M.S.T., a total of nine (9) hours being involved in traveling between points.

Mr. Maki worked from 4:30 P. M. to 1:00 A. M., less one half hour for lunch for which he was compensated at the pro-rata rate for such hours worked. No compensation was paid Mr. Maki for time involved between 2:30 A. M., P.S.T. and 12:30 P. M., M.S.T., September 10, 1951, excepting after claim was presented in behalf of claimant, the carrier then compensated him for eight hours at pro-rata rate for the hours of his regular assignment, same being 8:00 A. M. to 4:30 P. M. less 30 minutes for lunch, but no compensation has been paid to the claimant for all time spent in traveling between the hours of 2:35 A. M., P.S.T. and 8:00 A. M., M.S.T.

(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 Employees 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 either dismissed or 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 necessary 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 Employees or their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was regularly assigned to work in Carrier's ice plant at Needles, California, 8 A. M.—4:30 P. M. On September 10, 1951, he was assigned to perform special work at Carrier's plant at Winslow, Arizona. At Carrier's direction, he departed Needles on Carrier's Train No. 4 at 2:35 A. M., arrived Winslow at 12:30 P. M., reported for work at the Winslow plant at 4:30 P. M. and worked until 1:00 A. M. He was paid eight hours at pro rata rate for the work performed at Winslow from 4:30 P. M.—1:00 A. M. He was also paid eight hours at pro rata rate for travel and waiting time between 8:00 A. M. and 4:30 P. M. He was not paid for time spent traveling between 2:35 A. M. and 8 A. M. and the claim is for compensation at pro rata rate for this time.

Carrier contends that the claim before the Board varies from that handled on the property, and also that it is vague and indefinite. For these reasons, it is urged that the claim should be dismissed. We feel that the claim is clear. The difference between the claim finally handled on the property and the one before us is satisfactorily explained in the record and is in no way prejudicial to the Carrier.

In all other respects, this case is similar to Award No. 7598, decided this date. For the reasons set forth in that Award, 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 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 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.