Award No. 8490
Docket No. MW-7783

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow B&B Employes R. W. Montgomery and H. C. Rockwell six hours straight time pay for time consumed in traveling by way freight train from Tripp, South Dakota to Sioux City West Yard on July 14, 1954.

(2) The Carrier now be required to reimburse B&B Employes R. W. Montgomery and H. C. Rockwell for the exact amount of monetary loss caused by the Carrier's violation of the Agreement.

JOINT STATEMENT OF FACTS: The claimant employes were engaged in sign painting work and were furnished with boarding cars. On July 14, 1954 the claimants were performing service at Tripp, South Dakota, and upon completion of their work at that point were scheduled to move to Akron, Iowa, via West Yard, Sioux City. On this day the claimants returned to their boarding cars in advance of their regular 5:00 p.m. quitting time and loaded their equipment for movement. Shortly after 5:00 p.m., the claimants' boarding cars were picked up by way freight train No. 94 and moved to West Yard, Sioux City, arriving there about 11:00 p.m. During the movement from Tripp to West Yard, the claimants were instructed by the train conductor to ride in the caboose of No. 94's train.

A claim for six hours travel time by train was submitted by the claimants. The carrier allowed payment for one hour travel time from 10:00 p.m. to 11:00 p.m. at half time rate to each of the claimants. Claim was then filed in behalf of each of the claimants for six hours travel time at the straight time rate on the basis that the claimants were traveling by train or other conveyance and not traveling with boarding cars.

The claim was declined by the carrier on the basis that the claimants were traveling "with boarding cars" within the intent of the provisions of Rule 26(a).

The fact that the carrier's declination of identical claims in 1940 were accepted by the employes and that the carrier's declination of an identical claim in 1950, resulted in the claim being abandoned, can be considered significant in that it gives an insight relative to the same in the eyes of the petitioner.

In the agreement under consideration a specific rule appears, Rule 26(a), which deals with the matter here in controversy. It provides that employes required by the management to travel on or off their assigned territory with boarding cars will be allowed straight time traveling during regular working hours and for rest days and holidays during hours established for work periods on other days. When traveling with boarding cars after work hours, the only time allowed will be for actual time traveling after 10:00 P.M. and before 6:00 A.M. and at half time rate. 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. Rule 26(a) specifically applies to employes traveling **with** boarding cars. Rule 26(b) specifically applies to employes traveling without boarding cars.

Rule 26(a) as contained in the current schedule agreement and quoted above is identical with Rule 26(a) as contained in the schedule agreement effective November 1, 1940, except as to substitution of "rest days" for "Sundays" by reason of the 40 hour week agreement. During negotiations leading to the schedule agreement dated November 1, 1940 the parties not only agreed to change the language of Rule 26(a) but they specifically agreed that by changing the language of the rule employes traveling **with** boarding cars, even though not traveling **in** boarding cars, would be paid in accordance with the provisions of Rule 26(a). After the rule has been applied in accordance with the language of the rule and as agreed by the carrier and the former general chairman at the time the change in language was negotiated, we find now that the employes are seeking, by Board award, to establish a change in the application of the rule. Your Honorable Board has repeatedly held that it is the duty and responsibility of the Board to interpret and apply existing schedule rules in accordance with the language of the rules and intended meaning and that it is not the function of the Board to render awards having the effect of writing new rules or altering, by application or otherwise, those rules which are in existence.

In view of these facts we submit that this claim is entirely without merit and should be denied.

All data contained herein has been presented to the employes and conference has been held on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 26—Travel Time—of the applicable Agreement reads as follows:

> "(a) Employes required by the Management to travel on or off their assigned territory with boarding cars will be allowed straight time traveling during regular working hours, and for rest days and holidays during hours established for work periods on other days. When traveling with boarding cars after work period hours, the only time allowed will be for actual time traveling after 10 p.m. and before 6 a.m., and at half time rate.

"(b) Employes not with outfit cars will be allowed straight time for actual time waiting, or traveling by train or other conveyance, by direction of the Management during or outside of the regular work period or during overtime hours, either on or off assigned territory. Employes will not be allowed time while traveling in the exercise of seniority rights or between their homes and designated assembling points or for other personal reasons.

"(c) If during the time on the road the man is relieved from duty and is permitted to go to bed for five (5) or more hours such relief time will not be paid for."

At the outset we will, for the purposes of disposing of this claim, consider "outfit, boarding and camp" cars to be synonymous. It would appear that the three adjectives in question, so far as we are concerned, provide a distinction without a difference.

Such cars are provided to these men, when they are required to be away from their homes or home station in the service of the Carrier, as a substitute for the better comforts and accommodations of home.

The Joint Statement of Facts concedes that shortly after 5:00 p.m., on July 14, 1954, "the claimants' boarding cars were picked up by way freight train No. 94 and moved to West Yard, Sioux City, arriving there about 11:00 p.m. During the movement from Tripp to West Yard, the claimants were instructed by the train conductor to ride in the caboose of No. 94's train."

The Joint Statement continues:

"A claim for six hours travel time by train was submitted by the claimants. The carrier allowed payment for one hour travel time from 10:00 p.m. to 11:00 p.m. at half time rate to each of the claimants. Claim was then filed in behalf of each of the claimants for six hours travel time at the straight time rate on the basis that the claimants were traveling by train or other conveyance and not traveling with boarding cars.

"The claim was declined by the carrier on the basis that the claimants were traveling 'with boarding cars' within the intent of the provisions of Rule 26(a)."

In view of the plain purpose for which such cars are provided by Carriers for employes such as the Claimants here, it is equally plain that to participate in the benefits accruing therefrom such men must have the opportunity to ride in such cars.

When men are riding in a caboose at Carrier's direction, while their car is at some other point in the train, they most certainly are not "with" or in their cars within the plain meaning and intent of Rule 26.

A sustaining Award is in order.

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 8th day of October, 1958.

DISSENT TO AWARD No. 8490, DOCKET No. MW-7783

The Award violates fundamental principles of contract construction and goes beyond the statute limits of the Board's authority. The Board is never warranted in going beyond the express language of the controlling rule itself if the language is clear and unambiguous.

Here, the parties purposely changed the language of the Travel Time rule, effective November 1, 1940, from "in boarding cars" as it theretofore read, to "with boarding cars" so as to make it clear that employes with outfit cars who travel with such cars need not be "in" them to come within the purview of Rule 26(a). That change in the language of Rule 26(a) and the concurrent change made in the language of Rule 26(b) from "Employes not in outfit cars" to "Employes not with outfit cars" was certainly not a useless act by the parties. The agreed changes in language of the rule were made after much discussion and deliberation during negotiation of agreement revisions. A definite purpose was accomplished by the rule changes.

This Board goes far afield when it concludes that, "Such cars (outfit cars) are provided to these men * * * as a substitute for the better comforts and accommodations of home", and "* * * that to participate in the benefits accruing therefrom such men must have the opportunity to ride in such cars," and then adopts these conclusions as a premise for construing the Travel Time rule. In reality, outfit cars are now and from the advent of railroad construction have been provided as sleeping accommodations, and in many cases for eating accommodations as well, at or near the locations of work in the absence of other available lodging and eating facilities, especially in cases of employes whose work requires frequent moving as the work progresses. It might be said that outfit cars are a substitute for boarding and rooming houses in various and sundry communities, but nothing more.

Use of the assumed purpose of outfit cars as grounds for construing the Travel Time rule contrary to its express terms was erroneous and beyond the authority of the Board.

For these reasons, we dissent.

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp