Award No. 9310
Docket No. SG-8932

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company in behalf of:

> Assistant Signalman D. F. Leyton for four hours on July 9, 1955, at straight time rate of $1.745 per hour; also for Helper G. E. Jones for four hours on July 9, 1955, at straight time rate of $1.721 per hour, and Helper T. Morton for four hours on July 9, 1955, at straight time rate of $1.721 per hour, under Rules 20 and 24 of the Signalmen's Agreement.

EMPLOYES' STATEMENT OF FACTS: The claimants in this case were regularly assigned to Signal Gang No. 1, with headquarters in camp cars. This gang was located at Sylvania, Texas, (suburb of Fort Worth, Texas).

At about 9:30 A. M. on Friday, July 8, 1955, the outfit was billed to move from Sylvania to Hennessey, Oklahoma, with instructions to be prepared to make such move at 5:00 P. M. of that date.

About noon, on Saturday, July 8, the camp cars were moved from Sylvania to Fort Worth Yards by a switch engine, and left Fort Worth Yards for Hennessey, Oklahoma, about 2:40 P. M. the same day.

Travel time was allowed to claimants for four hours on Saturday, July 8, and eight hours on Sunday, July 9. Claim is made for four hours straight time due to each claimant for the first half of Saturday, July 8, which is a rest day.

Rule 20 of the Signalmen's Agreement provides as follows:

"RULE 20. HEADQUARTERS — CAMP CARS:

> Camp cars will be the headquarters as referred to in this agreement for employes assigned to such cars. When location of camp

The sixth paragraph of Rule 23 of the July 1, 1952 agreement reads as follows:

> "The term 'traveling or waiting' as herein used means traveling on trains or waiting for trains **while enroute.** Traveling on track motor cars including delays **while enroute** will be paid for as if actually working. Traveling in company owned trucks or company owned automobiles will be paid as if actually working." (Emphasis Ours).

From the above quoted portion of Rule 23, you will note the word "waiting" is interpreted as "waiting for trains while enroute". The employes in the instant claim were not enroute until the commenced travel at noon on August 9, 1955.

In handling this dispute on the property, the employes have denied the applicability of Rule 23, particularly Paragraph 6 quoted above, which defines, "traveling or waiting" as these terms are used in the entire agreement. Paragraph 6 of Article 23 might just as well have been designated as the first or last rule of the agreement for regardless of its position, it cannot be denied that the parties intended the definition contained therein to apply to all situations wherein the terms "travel" or "waiting" were used.

The Carrier contends that the employe's attempt to deny the applicability of the definitive portion of Rule 23 of the applicable agreement constitutes conclusive evidence that the term "waiting" has been acknowledged by both parties to mean waiting for trains while men enroute traveling in camp cars, are waiting along the line for connections, etc.

Your Honorable Board in rendering Award 6611 very meticulously pointed to the fact that rules involved and as indicated above, effective July 1, 1952, if applied to the claim arising on September 8, 1951 would have materially changed the Opinion of the Board.

In Award 6611, your Board said:

> "It is admitted in this case that the Carrier paid for part of the time claimed, but seeks to excuse itself by saying it misinterpreted the rule. We think that is a fair statement because it was less than a year after this claim arose that the Carrier was successful in negotiating the 1952 agreement which corrected the situation that undoubtedly gave rise to the misinterpretation."

Inasmuch as the instant claim is without merit and is not supported by any provision of the current Signalmen's Agreement, the Carrier has declined the claim and we respectfully request your Honorable Board to do likewise.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: These Claimants were regularly assigned to camp cars with assigned work hours from 8:00 A. M. to 5:00 P. M., exclusive of a meal period, Monday through Friday, rest days Saturday and Sunday. On a Friday morning they were instructed to prepare to move from near Fort Worth, Texas to Hennessey, Oklahoma. They were to be ready to move by 5:00 P. M. that day. The cars did not leave for Hennessey until about noon the following day, Saturday. The Claimants were paid four

hours travel time for that Saturday and eight hours travel time for Sunday, since it was necessary to travel Sunday to reach their destination. The issue in dispute may be briefly stated as: Does the Agreement require the Carrier to compensate the Claimants for the four hours waiting Saturday morning for the train to leave for its destination? The Carrier says no and the Organization says yes. We believe the evidence, and a prior Award by this Board, sustains the Organization.

The facts in sustaining Award No. 6611, are for all material purposes, the same as the facts in the instant case, and the parties in Award No. 6611 are the same as the parties in this case. The Carrier relies on the dissenting opinion in Award No. 6611 in support of its position in this case. We think the decision in No. 6611 is more persuasive than the dissent, and we are unable to find in the record any good reason for setting aside the precedent. It is our opinion that the pyramiding suggested in the dissent, for the apparent purpose of argument, is unrealistic in that it suggests a situation with which we are not confronted, and which it appears the Agreement does not contemplate. The Claimants in this case are asking for waiting time payment only and we think Rule 24 clearly provides that they are entitled to it. Furthermore, the dissent states that a holding such as this does not permit of establishing any particular time as the beginning of "waiting" which we think ignores the fact that waiting in these instances begins when the work day begins as provided for in the Agreement. This is obvious to us as the Carrier paid travel time for a half day on Saturday and a full day on Sunday on the basis of the regularly assigned work day.

We believe the Carrier in this case, by asking us to be guided by the definitions in Rule 23, has lost sight of the fact that in contract construction it usually only becomes necessary to look elsewhere in the Agreement when the provision in dispute is so ambiguous and unclear as to require studying the entire Agreement in an effort to ascertain what the parties really meant. With respect to being paid for traveling or waiting we think Rule 24 is clear and unambiguous, and the Claimants in this case were waiting and are entitled to pay for that time, as provided in 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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1960.

DISSENT TO AWARD NO. 9310, DOCKET NO. SG-8932

Statements in the opinion in Award 9310 to the effect that the facts in Award 6611 are for all material purposes the same as the facts in the instant case and that the Carrier relies on the dissenting opinion in Award 6611 in support of its position in this case are irrefragable evidence that Award 9310 is based upon misconstruction of the facts and circumstances. Carrier relied upon the revised Agreement of July 1, 1952 which distinguished the facts and circumstances from those in Award 6611 wherein the claim involved the prior Agreement.

Award 9310 is patently erroneous, in view of which we dissent.

/s/ J. F. Mullen

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan