

Award No. 9964

Docket No. MW-8965

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement and particularly Rule 38 (a) thereof, when it refused to allow B & B Equipment Operator J. B. Bacon payment for a call for work performed in inspecting Pile Driver No. 204619 while enroute from St. Joseph, Missouri to Brookfield, Missouri on August 30, 1955;

(2) Claimant J. B. Bacon now be reimbursed the exact amount of monetary loss suffered by reason of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On August 30, 1955 B&B Equipment Operator J. B. Bacon, who was regularly assigned to the operation of Pile Driver No. 204619, was located at St. Joseph, Missouri.

At 5:35 A.M. on the above referred to date, the claimant was required to accompany the pile driver in a train movement from St. Joseph, Missouri to Brookfield, Missouri.

Upon arrival at Breckenridge at 8:35 A.M., the pile driver was set out on a side track; switched onto another train at 4:16 P.M. and arrived at Utica at 7:25 P.M.

Upon approaching Utica, the claimant observed smoke rising from beneath the pile driver. At Utica, while the train crew was performing switching services, the claimant made an inspection of the brake equipment, wheels and trucks on the pile driver, in accordance with the Carrier's following standing instructions, to ascertain if the pile driver could be safely moved on to Brookfield, Missouri.

"Chicago, Ill.
Febr. 12, 1952

To all B&B Equipment Operators, MIJ.-354:

Before putting your equipment in train for movement you should go over your brake equipment and see it is in order.

* * * * *

(Exhibits not reproduced)

OPINION OF BOARD: Petitioner contends that Carrier violated the applicable Agreement when it refused to allow Claimant, a B & B Equipment Operator, payment on a "call" basis for work performed in inspecting a pile driver on April 30, 1955. The theory of the claim is that the inspection became necessary and was performed outside and not continuous with Claimant's regular work period and that he therefore is entitled to compensation under Rule 38 (a) which provides as follows:

"Employees notified or called to perform work not continuous with the regular work period, will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on actual minute basis."

Claimant is a monthly rated employee with 7:30 A. M. to 4:00 P. M. as his assigned hours. On the day in question, he was accompanying the pile driver from St. Joseph, Missouri, to Brookfield, Missouri. The movement began at 5:35 A. M. and terminated at 10:45 P. M. that same day. In line with the requirements of Rule 46 (a), the Agreement's provision governing travel pay, Claimant was compensated for his regular work period that day and in addition received eight hours at half-pay for the twenty-five minutes he traveled before 6:00 A. M. as well as a like amount for the forty-five minutes traveled after 10:00 P. M.

Rule 46 (a) provides as follows:

"Employees required by the management to travel on or off their assigned territory in outfit cars will be allowed straight time during regular working hours and for rest days and holidays during hours established for work periods on other days. Time waiting between train connections enroute, will be considered as travel time. When traveling in outfit cars after regular hours, the only time allowed will be after 10:00 P. M. and before 6:00 A. M., with a minimum of eight (8) hours at half time rate.

Note: See Appendix 'E' for effective date and examples."

Under Rule 46 (a), Claimant would ordinarily receive no compensation for the period from 4:00 P. M., when regular work day ended, until 10:00 P. M. while in travel status required by management "in outfit cars". Petitioner nevertheless maintains that, pursuant to Rule 38 (a), Claimant should have been allowed a minimum of two hours and forty minutes at time and one-half for the inspection he made of the machine between 7:25 P. M. and 8:05 P. M. when he detected smoke arising from beneath his machine. We do not agree.

On the basis of the record before us, it is quite evident that the inspection under consideration was incidental to his primary responsibilities at the time in question. One of the principal purposes for requiring Claimant to accompany the machine and to compensate him for his time, whether he worked or not, was to cover just this kind of duty. We do not regard the inspection in the category of service that would warrant an exception to Rule 46 (a)'s plain

provision that when traveling in outfit cars after regular hours, "the only time allowed" will be after 10:00 P. M. and before 6:00 A. M., with a minimum of eight (8) hours at half time rate.

The notice of February 12, 1952, relief on by Petitioner, merely suggests to us, when considered in the light of the record and Rule 46 (a), that it too contemplated that Claimant would perform the inspection in question as part of his travel compensation.

Awards 5159, 7944 and others cited in support of the claim are not helpful since they do not concern provisions substantially similar to Rule 46 (a).

Under the facts of the present case and particularly in view of the mandatory language of Rule 46 (a) we perceive no valid basis for the claim and it will be denied.

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:

The the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 9th day of June, 1961.