

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when it failed and refused to compensate Section Foreman John Robinson Sr. and A. Robinson; Section Laborers Floyd C. Williams, W. E. Russell, W. S. Synder, C. E. Basewell, C. K. Shearer, D. A. Webb, Steve Harrell, Sam Wildy, Roosevelt Harrell, Leonard Smith, Jim King and Winston Marshall at their respective time and one-half rates of pay for services performed during the period 5:00 A. M. to 6:00 A. M. on July 21, 22, 23, 26 and 27, 1954;

(2) The Claimants named in Part (1) of this claim be allowed the difference between what they were paid at their respective straight time rates and what they should have been paid at their respective time and one-half rates of pay for services as rendered from 5:00 A. M. to 6:00 A. M. on each of the dates referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: During the period involved in this dispute the claimants named in Part (1) of our Statement of Claim were regularly employed on Section Nos. 14 and 30, with headquarters at Carbondale and Pulaski, Illinois, respectively. They were assigned to work five days per week with daily assigned hours beginning at 6:00 A. M.

Both section crews are regularly furnished with a track motor car for transportation between their respective designated assembling points (tool-houses) and the daily work location.

In each instance prior to September 3, 1953, in accordance with the accepted and agreed to practice, and in conformance with the applicable rules of the agreement, whenever it was necessary for these claimants to leave their respective designated assembling points in advance of their regular assigned hours they have been traditionally paid for such time at their respective time and one-half rates of pay.

Since the Employees agree that Rule 41(b) provides for payment of pro rata rate during recognized overtime hours at home station, the present claim represents an effort by the Employees under the guise of interpretation by the Adjustment Board to obtain a rule more favorable than those obtained through collective bargaining. In a series of awards too numerous to require citation, the Board has held that its function is to interpret agreements and not to make them.

There is clearly no basis for this claim, and it should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

OPINION OF BOARD: The issue to be resolved is whether or not Claimants are entitled to time and one-half pay, rather than the straight time they received, for the hour spent daily on July 21, 22, 23, 26 and 27, 1954, in proceeding by trucks from their designated assembly points to work sites. It is Petitioner's view that the higher rate should have been paid since the hour in question immediately preceded the Claimants' regular starting time, 6:00 A. M., on each of those five days.

There is no question but that Rules 38 (a) and 39 (a) of the applicable Agreement require time and one-half compensation for "time worked" or "service performed" continuous with and in advance of the regular work period. However, Carrier points to Rule 41 (b) which reads as follows:

"Employees, except as provided for in Rule 42 and Section (a) of Rule 41, who are required by the direction of the management, to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at pro rata rate."

Rule 41 (b) treats specifically with travel and would be controlling in the present situation if it were clear that the one hour period under consideration constituted "travel" within the meaning of that rule. The record, however, contains considerable evidence, which we do not find too vague or general in the light of the procedures of this Board, that the parties have regarded short-haul motor transportation to work sites as "service performed" rather than as "travel". As a matter of fact, Carrier concedes that employees receive time and one-half pay under like circumstances where the movement is by track motor car rather than truck; the practical distinction shown by the record to exist between these two modes of transportation is artificial, in our opinion, so far as the issues in this case are concerned.

All factors considered, we find little realistic difference between the situations confronting this Board in Awards 9263, 4581 and the present case. In each of these three matters, identical "travel" rules were under consideration. Under the circumstances of this dispute and the authority of the awards just cited, we will sustain the claim.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July, 1961.

DISSENT TO AWARD NUMBER 9983, DOCKET NUMBER MW-8820

Quoted Rule 41 (b) appears in the Agreement between the parties under the caption "TEMPORARY OR EMERGENCY TRAVEL SERVICE". It specifically covers the three elements involved when the Carrier required the claimant members of two section gangs to leave their home stations to augment a third section gang engaged in a rail laying program. It provides

- (1) The Employees will be allowed actual time for travel or waiting during the regular working hours;
- (2) All hours worked will be paid for in accordance with practice at home station; and
- (3) Travel or waiting time during the recognized overtime hours will be paid for at pro rata rate.

The mode of travel is not limited by the Rule, but the hours worked on the one hand and travel or waiting on the other are obviously distinguished for pay purposes under this Rule. Here, the claimants left their home stations and traveled to a distant point during recognized overtime hours, which is specifically to be paid for at pro rata rate; they worked on the section where the rail laying program was in progress, which hours of work were paid for in accordance with practice at their home station, and they traveled from the latter point to their home station during the regular working hours and were paid therefor at actual time as specifically required by this Rule.

Each of the parties is responsible for the inclusion of the language in Rule 41 (b) and what we may think of its wisdom, relative importance or soundness is not at all material. It is our function, as we stated in Award 8564 (Weston), to interpret the Agreement as it stands and not rewrite it in accordance with our own theories of labor-management relations.

The Railway Labor Act (Section 2, First) imposes the duty on the Carrier and Employees to make and maintain Agreements and (Section 2, Seventh) prohibits change of rates of pay, rules or working conditions except in the

manner prescribed in Agreements or in Section 6 of the Act. This Award 9983 has the effect of vitiating explicit provisions of the Agreement between the parties, contrary to their statutory duties of maintaining the Agreement. Award 9983 is patently in error in failure to apply the specific Rule pertinent to the facts as was done in Awards 8457, 6857, 6651 and 6400.

For these reasons and for the reasons expressed in Dissent to Award 8825, we dissent.

/s/ J. F. Mullen
/s/ P. C. Carter
/s/ R. A. Carroll
/s/ W. H. Castle
/s/ D. S. Dugan