Award No. 11287
Docket No. MW-9128

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

RUTLAND RAILWAY CORPORATION

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

(1) The Carrier violated the agreement when it compensated employes from Sections 2, 3, 4, and 5 at straight-time rates instead of at overtime rates for time consumed outside of and following their regularly assigned work period in returning to their respective regularly assigned headquarters on February 14, 15, 16, 21, 25, 1955 and on various other dates subsequent thereto.

(2) The employes referred to in part (1) of this claim each be allowed the difference between what they were paid at the straight-time rate and what they should have been paid at the overtime rate for all time consumed in returning to their respective headquarters during overtime hours on the dates and period referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On February 14, 15, 16, 21 and 25, 1955, and on various dates subsequent thereto, the claimant employes, who are employed on Sections Nos. 2, 3, 4 and 5 respectively, were required to leave their home station and to go to Rockingham to assist the Rockingham section gang in performing certain track work on that territory.

The claimant employes, together with tools and equipment, were transported to and from their respective headquarters and Rockingham in a highway truck each day, returning to their respective headquarters during overtime hours on each of the dates involved in this dispute. For the time consumed in returning to headquarters each day, the claimants we allowed only straight-time pay.

The instant claim was accordingly filed and progressed on the property in the usual and customary manner; the Carrier declining the claim at all stages of progress.

The Agreement in effect between the two parties to this dispute dated

It certainly cannot be argued that the provision of the first Memorandum of Agreement of June 11, 1951 for the payment of time and one-half rate for traveling by train or bus on rest days, holidays or calls is applicable to the instant case. The days for which claim is being made were regular working days of the gang and the time for which payment is in controversy was after and continuous with the gang's regular assigned work period.

The other Memorandum of Agreement dated June 11, 1951, specifically says that any rules or Memoranda of Agreement or Understanding not specifically referred to remain unchanged, and the overtime Rule 18 starts out with the phrase: "Except as otherwise provided in these rules. . . ."

Therefore, the second sentence of Rule 22(b) is controlling in this disput and under the provisions of this rule the employes involved were properly compensated when they were paid at pro rata rates for travel time during the recognized overtime hours at their home station.

The only technicality upon which the employes might conceivably base their claim is that the wording of the first sentence of Rule 22(b) applies to the second sentence and that they traveled from the point of work to their headquarters in a truck instead of train or bus. It is the position of the Carrier that a truck equipped for transporting men is for all intents and purposes a bus and should be considered as such. At the time the Agreement of May 1, 1944 was written, the Carrier did not own any trucks, their first use by the Maintenance of Way Department being in 1953.

The second sentence of Rule 22(b) refers merely to travel time and makes no reference to the mode of transportation. This clearly indicates the intent of the rule that pro rata rates rather than overtime rates apply when employes have finished their work and are neither performing any service nor assuming any responsibility while being transported back to their headquarters. Had trucks been in use for the transportation of men at the time the Agreement was made, it is most certain that they would have been mentioned in the first sentence of Rule 22(b).

It is the Carrier's position that the employes' claim is without merit and should be denied.

All relevant facts and arguments in this case have been made known to the employes' representatives.

OPINION OF BOARD: A review of the record shows that the Statement of Claim set out in the Submission filed by the Organization, is not the same as made on the property and presented to Carrier. The first claim filed was presented to the Chief Engineer, in writing, on March 25, 1955, as follows:

> "Employes from following Sections Nos: 2, 3, 4 and 5 were paid pro rata rate returning by truck after working at Rockingham to their headquarters, beginning February 14, 1955, claim is hereby being made in accordance with Rule 22-B for time and one-half rate."

Denial of the claim was made by the Chief Engineer to C. T. Sharon, under date of April 13, 1955.

The claim was revised by the Organization, as set out in letter from the General Chairman, dated April 13, 1956. In that letter, it will be noted, that the Organization for the first time has brought out specific dates of claim,

except February 14, 1955. A comparison of the claims filed March 25, 1955 and that filed on April 13, 1956 shows the claims are not one and the same.

From the information contained in the record before us, the parties have not furnished this Board with all the evidence in their possession, as noted by a reference to a series of eleven letters exchanged between the parties in reference to this matter. See Record Page 27.

Since the Original claim was filed with Carrier, March 25, 1955, the record shows that Carrier denied the claim April 13, 1955, within the time prescribed by Rules 32 and 38 of the Agreement.

Under the record before us, we have no alternative but to dismiss the claims on the grounds and for the reason that the Organization failed to present claim as provided by the Agreement, nor within the time limit as provided.

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

The Organization failed to properly present claims, in accordance with provisions of the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1963.