Award No. 13359
Docket No. MW-12818

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement and practices thereunder when it refused to compensate Carpenters C. R. Cummins, Frank Lenard, Jack McKindley, J. Ciesielski, and A. Hennequant at their respective time and one-half rate of pay for work performed in going from and returning to their headquarters during overtime hours on January 19, 1960, and on days subsequent thereto.

(2) Each of the Claimants referred to in Part (1) of this claim be allowed the difference between what he was paid at his respective straight time rate of pay and what he should have been paid at his respective time and one-half rate of pay for services as referred to in Part (1) of this claim since January 19, 1960.

EMPLOYES' STATEMENT OF FACTS: The claimant employes were regularly assigned as Carpenters with headquarters at Rook, Pennsylvania. Their regularly assigned hours were from 8:00 A. M. to 12:00 Noon, and from 12:30 P. M., to 4:30 P. M.

On January 19, 1960, and on days subsequent thereto, the Claimants were required by the Carrier to leave their headquarters at 7:00 A. M. in order to arrive at State Line Tunnel at 8:00 A. M., the beginning of their regularly assigned work period. After working the full eight hours at State Line Tunnel at 4:30 P. M., the Claimants left this point and arrived at their headquarters at 5:30 P. M. The Claimants were transported from and to their headquarters by a motor truck which replaced a track motor car in 1957.

Each Claimant thus consumed two hours in going from and to his headquarters for which he was compensated at his respective straight time rate of pay.

specifically expanded by direction of the Agreement of 1949. By specific and direct reference, the Agreement of 1949 provided that travel time rules were not thereby varied, altered or amended in any way. Thus, as it was prior to 1949, the travel and waiting time rule is a proper, lawful, effective, and governing rule in the instant case. Claimants cannot show that it was abrogated or modified in any manner whatsoever. Attention is directed to the changes made in Article V, Section 6, by direction of the Agreement of 1949. (See underlineation last paragraph Page 6 hereof). The distinction between work and travel is fully recognized in the paragraphs there shown which expanded the method of payment for work. Thus, the travel time rule does not in any manner affect the computation of the 40-Hour Week unless such travel time takes place during regularly assigned hours.

The defense of a claim such as is here progressed is a difficult matter. The Carrier's position is predicated so completely on true and accepted principles which are so completely responsive to the situation that one feels the danger of unduly belaboring a truism. All the rules advanced by claimants in support of their claim contemplate the performance of work, service, or meeting a duty of some type. No such requirements were placed on claimants here. The Carrier has for many years been utterly honest in its application of these rules as is evidenced by the fact that we have recognized the fact that the driver of the truck involved was performing duties during the traveling hours and therefore was paid at overtime rates. We recognize that the foreman was still responsible for the conduct and well being of his employes and was to a degree supervising the driver's activities — he too was paid overtime rates. In other instances when a one-man crew is out during overtime hours by himself in a truck, we recognize the responsibilities to be met by him and pay accordingly. Thus, our failure to pay overtime rates in the facts of this case cannot be construed as "sharp practice". Since the Carrier is willing to meet its obligations when they are due and owing, we think it entirely appropriate to be given our full measure of justice when the rules are in the Carrier's favor.

The Division has no authority to promulgate rules. Its sole prerogative is to apply the rules as they are found. It may not even resort to interpretation unless ambiguity is found. No ambiguity is present here and therefore we are bound entirely by the specific wording of the travel time rule.

Summarizing, the Carrier respectfully submits that payment for travel or waiting time has been fully and correctly paid in strict conformance with the applicable rule, which rule is specific and precise in its terms, which rule is not inconsistent with any other rule or rules advanced by the claimants, which rule was not modified or abrogated in any manner in writing or by the operation of past practice. The claim should be denied.

OPINION OF BOARD: On January 19, 1960, a gang of carpenters with regular work schedules from 8:00 A. M. to 4:30 P. M. were instructed to report to their headquarters at Rook, Pennsylvania at 7:00 A. M. in order to be able to start work at 8:00 A. M. at State Line Tunnel, 30 miles away. Carrier transported them to the proper location by motor truck and returned them by the same conveyance to their headquarters at 5:30 P. M. after picking them up at the usual quitting time, 4:30 P. M. Carrier compensated the employes at the straight time rate of pay for one hour from 7:00 A. M. to 8:00 A. M. and the one hour between 4:30 P. M. and 5:30 P. M., time spent traveling between the Rook, Pennsylvania headquarters and the place of work.

On behalf of the named carpenters, the Brotherhood contends that these two hours were work time in excess of the regular eight hour day and should be paid for at the time and one-half rate of pay. It relies upon Sections 6 (A) and 10 (B) of Article V of the Agreement to support this contention. Furthermore, it maintains that the practice supports the claim.

Carrier argues that the carpenters performed no work while traveling between the Rook, Pennsylvania headquarters and the State Line Tunnel; and, therefore, they were compensated properly under the unambiguous Section 20 of Article V which provides for the pro rata rate for travel or waiting time during overtime hours. Carrier also denies that it ever paid employes punitive rates for traveling time under circumstances similar to those in the instant case.

In relying upon Section 20, Carrier states that this provision is expressly applicable to the instant case because travel time is involved. Even if this Rule is clear and unambiguous, as Carrier maintains, it is applicable only after it has been established that the time was travel time. We, therefore, examine the question of whether this time can be considered travel time or whether it must be recognized as work time, which requires the application of Section 6 (A).

On past occasions Carrier has paid employes the time and one-half rate for time consumed in connection with travel to and from headquarters in excess of the regular eight hours. It has explained the use of this rate because of the type of vehicle used in transportation and the duties assigned employes enroute. Carrier, for example, paid punitive rates when track motor cars were used and the employes riding in them were required to assume the responsibility of watching for falling rocks. In Award No. 4581, as in the instant case, the same two types of rules — travel time and work time rules — were in question. In that award the Carrier substituted transportation by motor truck for track motor car and applying the travel time rule compensated the employes under the pro rata provision. The Board held, however, that the change of vehicle did not have the effect of changing the existing hours of service, and the employes were sustained in their claim for travel time as time worked in excess of eight hours. In the case at bar the carpenters were also passengers in a motor truck in the service of Carrier under the direction of the foreman. Moreover, the record presents evidence that in the past employes received compensation at the time and one-half rate during overtime hours as time worked traveling to and from their home station under circumstances similar to those in the case under consideration. Carrier has admitted such payments on occasion but dismisses them as oversights.

In view of the fact that the carpenters were in service under Carrier's control and in view of the fact that Carrier had in the past recognized this type of travel as work time, we hold that the Agreement was violated and the Claimants are entitled to the difference between the pro rata rate and the time and one-half rate.

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 Agreement of the parties 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 26th day of February 1965.