

Award No. 13990

Docket No. SG-14079

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Coast Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violated the Signalmen's Agreement, as amended, particularly Article II, Section 18, when it refused payment to the members of Signal Foreman Stull's signal gang for the time the signal cars to which they were assigned were in transit from San Bernardino to Hinkley, California, between the hours of 11:45 A. M., Saturday, October 21, 1961, and 6:05 A. M., Monday, October 23, 1961.

(b) The following named Claimants be properly compensated at their respective pro rata hourly rates of pay for eleven (11) hours and forty-five (45) minutes the payable time that the signal camp cars were in transit.

C. L. Woodruffe

C. A. Davis

H. A. Coleman

C. M. Baxter

B. G. Conway

J. R. Aaron

D. L. Young

M. H. Bauer

J. V. Cunningham

A. J. Bradley

[Carrier's File: 132-129-1]

EMPLOYEES' STATEMENT OF FACTS: This dispute involves the following employees of Signal Foreman Stull's Los Angeles Signal Gang:

C. L. Woodruffe

C. A. Davis

H. A. Coleman

C. M. Baxter

B. G. Conway

J. R. Aaron

D. L. Young

M. H. Bauer

J. V. Cunningham

A. J. Bradley

to return to their home seniority district. It will also be observed the rule simply provides that employees who are so affected will be "allowed travel time returning to their home seniority district" and does not prescribe the amount of travel time that is to be allowed them. In other words, the travel time that is to be allowed under the rule will be dependent upon the manner in which they travel in returning to their home seniority district and will be determined under the terms of Article II, Section 17 and 18 of the current Signalmen's Agreement, depending upon whether they travel on trains by direction of management or in camp cars.

Inasmuch as none of the claimant employees in the instant dispute had been affected by either the discontinuance of or a force reduction in any signal gang and were not returning to their home seniority district when their camp cars were removed from San Bernardino to Hinkley, California, it will be abundantly clear that the aforementioned Article III, Section 14(g), is wholly inapplicable and lends no support whatever to the Employees' claim in the instant dispute.

In conclusion, the respondent Carrier respectfully reasserts that the claim of the petitioning Brotherhood in the instant dispute is wholly without support under the rules of the current Signalmen's Agreement, and should be denied for the reasons heretofore set forth.

OPINION OF BOARD: Claimants were engaged in signal work in the vicinity of San Bernardino, California. Camp cars were available for use by Claimants, but they elected to travel to and from their homes and their place of work. They did not use the camp cars as their home base. Instead, they preferred to be at their homes overnight. Eight of the ten Claimants lived in San Bernardino, or in the immediate vicinity. Two lived about forty-five miles from San Bernardino.

On Friday, October 20, 1961, Claimants were advised that their gang was to be moved over the weekend to Hinkley, California, a distance of about 91 miles, that their assigned hours would be changed effective Monday, October 23, 1961, and that they had the option of either occupying the camp cars while enroute to Hinkley or spending the weekend at their homes. They elected to remain at their homes during the weekend. All of them traveled to Hinkley in their own automobiles, and reported for work at 8:00 A. M. on Monday, October 23, 1961, as directed.

Petitioner contends that in accordance with the provisions of Article II, Section 18, and with the interpretation dated April 5, 1960, from Superintendent A. K. Johnson, Claimants are entitled to eleven (11) hours and forty-five (45) minutes' travel time.

Section 18 of Article II of the applicable Agreement states:

"Section 18. Employees required by the Company to travel on or off their assigned territory in camp cars will be allowed straight time traveling during regular working hours and for actual time traveling on Sundays and holidays during hours established for work periods on other days."

The camp cars were moved from Storage Track No. 1 at San Bernardino by a switch engine at 11:45 A. M. on Saturday, October 21, 1961 and placed on Track 12 in the San Bernardino "A" yard, where they remained until sometime between 3:15 P. M. and 11:15 P. M. on that Saturday (the exact

time is not in the record). They were then moved by a switch engine from Track 12 in "A" yard to Track 15 in the San Bernardino "B" yard. They were picked up by an outbound train at 3:40 P. M. on Sunday, October 22, 1961, and arrived at Hinkley at 6:05 A. M. the following day.

Claimants' scheduled work hours at San Bernardino were from 7:00 A. M. to 3:30 P. M. It is Petitioner's position that the camp cars were traveling after they left Storage Track No. 1 and when they were switched first to "A" yard and then to "B" yard. Thus, Claimants are entitled to 3 hours and 45 minutes from 11:45 A. M. to 3:30 P. M. on Saturday, October 21 and to 8 hours from 7:00 A. M. to 3:30 P. M. on Sunday, October 22, 1961, for a total of 11 hours and 45 minutes.

Compensation for travel time under Section 18 of Article II is paid for "actual time traveling." Claimants were not in the camp cars during any of the hours when the camp cars were switched from one yard to another nor when they were transported from San Bernardino to Hinkley. Claimants voluntarily elected to spend Saturday and Sunday at their homes. There is no evidence in the record that Claimants were "actually traveling" in camp cars on those days during their regular scheduled hours of work for the work periods of their scheduled work days.

The memorandum dated April 15, 1960, from Mr. A. K. Johnson is addressed to Signal Foremen. Mr. Johnson was the Superintendent. There is no evidence in the record that he had any right to interpret Section 18 of Article II, nor is there any evidence that Signalmen were ever compensated for actual travel time on the basis of the alleged interpretation. In the absence of clear and convincing evidence of past practice, the alleged interpretation has no meaning. But, even if this memorandum can be considered an interpretation of the Agreement, Claimants are not entitled to recover.

While the facts in Award 13157 are not similar to those in the dispute under consideration, the general principle enunciated therein is valid to the determination of this claim. The Claimants were not "actually traveling" when the camp cars were switched. None of the Claimants were in the camp cars from 11:45 A. M. to 3:30 P. M. on Saturday and from 7:00 A. M. to 3:30 P. M. on Sunday when the camp cars were switched from one location to another. The cars were not in transit nor actually traveling during those hours within the meaning of Article II, Section 18. They were in transit or actually traveling between 3:40 P. M. Sunday and 6:05 A. M. on Monday. These were not "hours established for work periods on other days."

On the basis of the entire record, Claimants are not entitled to recover. It is conceivable that a more flexible application of "actual time traveling" may be appropriate under a different state of facts and evidence in the record.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1965.