



Award No. 14916

Docket No. MW-13588

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it required Machine Operator G. L. Barnes to travel from one assignment to another on September 16 and 17, 1961 and failed and refused to allow him travel time pay therefore.

(2) Machine Operator G. L. Barnes be allowed sixteen (16) hours of travel time pay account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: From September 5 through 15, 1961, the Claimant was employed as a relief machine operator on Machine D-26, located at North Yard, Denver, Colorado.

The Claimant received orders which read:

"NY 55-2
DU 26-2
S 6-2
HD 2
UN 116-3 DC DF

Denver 10:43 A. M. 12
1961 Sept. 12 P. M. 1 22

A C B No YD
D L Drake L-G c/o W J Gill Denver
T E Hill B-28 c/o W J Gill Denver
G L Barnes D 26 North Yard
H O Chappell Jr D-30 Buena Vista
C H Cruse KD 3 Buena Vista
L L Nichol D 24 Minturn
R D Combs Salt Lake
J R Carlson B-30 Sol Smt
R C Phillips B-15 Sevier

Following successful bidders machines shown advise when take-over Nichol D-26 North Yard, Chappell D-30, Hill B-28, Phillips B-30 Sol Smt, Carlson KD-3 Princeton. Following report relief operators machines shown Monday, September 18. Acknowledge. Cruse D 24 Belden, Barnes B-15 Sevier Drake B-30 Sol Smt.

C-9-7.

/s/ C. R. Turner....1:03 P. M."

The means of transportation by which the Claimant was to travel was not designated by the Carrier, but the time in which he could travel was limited to the weekend of September 16 and 17, 1961.

The approximate distance to be traveled was 625 miles and there was no passenger service between North Yard, Denver, Colorado and Sevier, Utah. The Claimant's outfit car was located at Burns and would not reach Sevier, Utah in sufficient time for him to report for work as ordered.

The Claimant drove his personal automobile to the location of his work assignment and reported for work on September 18, 1961. Travel time of eight (8) hours on September 16 and eight (8) hours on September 17, 1961 was submitted by the Claimant and deleted by the Carrier.

The Agreement in effect between the two parties to this dispute dated February 1, 1941, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Equipment Operator G. L. Barnes who had no permanent assignment was holding a temporary assignment pending expiration of bulletin on Machine D-26 (dragline) at North Yard, Denver, Colorado. Successful bidder on the D-26 was senior Equipment Operator L. L. Nichol who reported for the assignment on Monday, September 18, 1961. This relieved junior Equipment Operator G. L. Barnes after working Friday, September 15, 1961, as the D-26 was not assigned to work on Saturday or Sunday. Being the senior unassigned work equipment operator, he was notified of a temporary vacancy for machine operator beginning September 18, 1961, at Sevier, Utah, on the B-15 (bulldozer). The B-15 had been bulletined on September 11, 1961, and the bulletin expired September 21, 1961. G. L. Barnes, the claimant, was successful bidder on the B-15. Under the provisions of the agreement Mr. Barnes was entitled by virtue of his seniority to fill the vacancy on the B-15 pending expiration of the bulletin, and he was so notified and accepted the assignment in an exercise of seniority. Claim for travel time was denied.

OPINION OF BOARD: From September 5, 1961 through September 15, 1961, Claimant was employed as a relief machine operator on Machine D-26 located at North Yard, Denver, Colorado.

Claimant was notified by telegram to report to Sevier Utah, on Monday September 18, 1961. The method of transportation was not designated by Carrier. Claimant traveled to Sevier by auto on Saturday, September 16th and Sunday, September 17th and reported for work at Sevier on Monday, September 18th.

The Brotherhood position is that Claimant reported to Sevier in response to an order from Carrier which was given in recognition of his seniority. The claim for two days' pay for travel time is based upon the provisions of Rule 15(a) of the Agreement.

Carrier contends that Claimant's travel to Sevier was made in the exercise of his seniority. It asserts that no travel time is payable by virtue of the provisions of Rule 15(e).

The finding must be that the telegram of Carrier sent to Claimant on September 12, 1961, constituted a clear order to report for work at Sevier. The telegram to the claimant containing the order is substantial proof that the travel of the grievant was in response to the order. The inquiry made by claimant to the Mr. Phelan in the Chief Engineer's office as to available modes of travel to Seviars must be recognized as acknowledgement of the order.

The record is convincing that claimant reported at Seviars in response to an order from Carrier to so report and this would negate Carrier's contention that claimant traveled to Sevier to exercise his seniority.

The selection by Claimant to use his auto as the mode of travel to Sevier is in accord with the provision of Rule 15(a). The quoted rule uses the following language:

"... employees who elect to use other means of transportation ... " (Emphasis ours.)

This language must be construed to mean that the employe is permitted to select the type of transportation most convenient for his needs.

It must therefore be the finding that the travel of the claimant to Sevier by auto on September 16 and 17, 1961 was in response to an order issued by Carrier which was given to him in recognition of his seniority and such travel was not made by Claimant for the sole purpose of exercising his seniority rights.

A sustaining award will be made.

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 4th day of November 1966.

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