Award No. 16991
Docket No. MW-17732

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) The Agreement was violated when the Carrier failed and refused to pay Special Equipment Operator R. L. George for time consumed deadheading on February 12, 1967.
(System file D-4552/A-9133.)

(2) Special Equipment Operator R. L. George be allowed sixteen (16) hours' pay at his straight-time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant R. L. George is the regularly assigned operator of Tractor T-152M with an assigned work week extending from Monday through Friday (Saturdays and Sundays are rest days). His assigned headquarters are outfit cars which, during the period here involved, were being repaired and were not available to the claimant.

On Friday, February 10, 1967, upon completion of his work assignment at Barnhardt, Missouri, the claimant loaded his tractor and billed same to Pensacola, Florida, in compliance with instructions he received that day within a message reading:

"R. L. George:

Bill T-152-M to MM Trentham, Pensacola, Friday, February 10 advising all concerned by wire when billed. J. T. T. P. M. M. T.

/s/ R. D. W. 1:10 P. M."

Compliance with the Carrier's instructions required that the claimant deadhead from Barnhardt to Pensacola (approximately 900 miles) on Sunday, February 12, 1967, in order to be available to protect his assignment as operator of Tractor T-152M at his usual starting time on Monday, February 13, 1967. The claimant consumed a total of sixteen (16) hours in deadheading. The Carrier failed and refused to compensate him for such deadhead time.

Claim was timely and properly presented and handled by the Employes at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated March 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: R. L. George, Jr., the claimant in this dispute, began service with this Carrier as a Special Equipment Operator on August 13, 1956.

On May 4, 1964 the Position of Operator of Ford Tractor T-60 M was bulletined and assigned on May 14, 1964 to Claimant George while he was on vacation. Upon his return from vacation Monday, May 18, 1964, Claimant George reported for service as the operator of Ford Tractor T-60 M mowing right-of-way in the vicinity of Crystal City, Missouri.

From May 18, 1964 to April 28, 1966 Mr. George operated Ford Tractor T-60 M mowing right-of-way on portions of the territory comprising the former River Division of this Carrier.

On April 29, 1966 the Carrier delivered to Claimant George at Sikeston, Missouri a new Ford Tractor, designated T-152 M, in replacement of the T-60 M. Mr. George continued to mow right-of-way on portions of the territory comprising the former River Division.

On February 6, 1967, while working in the vicinity of Barnhart, Missouri, Claimant George was instructed to bill Ford Tractor T-152 M to Pensacola, Florida on Friday, February 10, 1967. Outfit cars assigned to Claimant George, SF-105182 as the bunk car and SF-146683 as the equipment car, were then located at Gravois, Missouri. On Friday afternoon, May 10, 1967 Claimant George loaded Ford Tractor T-152 M onto the equipment car and billed SF-105182 and SF-146683 to Pensacola, Florida. Mr. George then departed for his home in Marshfield, Missouri as permitted by the provisions of Rule 32 of the Agreement of March 1, 1951, quoted below:

> "Employes will be allowed, when in the judgment of the management conditions permit, to make weekend trips to their homes. Free transportation will be furnished consistent with the regulations. Any time lost on this account will not be paid for."

Following the Claimant's trip home over the weekend, he reported on Monday morning at Pensacola and resumed work on the piece of special equipment to which he was assigned.

OPINION OF BOARD: The Claimant in this case, Mr. Robert L. George, had been operating a tractor, identified as Tractor T-152M, mowing the Carrier's right-of-way in and around Barnhardt, Missouri for some period of time prior to February 6, 1967. On that date, Mr. George received a message from the Carrier instructing him to load the tractor and bill it to Pensacola, Florida on Friday, February 10, 1967. Mr. George carried out these instructions and then went to his home in Marshfield, Missouri where he stayed until Sunday, February 12, 1967, at which time he drove his automobile to Pensacola, Florida in order to report for work in Pensacola on February 13, 1967.

His claim is for 16 hours' pay at the straight-time rate for his time spent in "deadheading" to Pensacola.

The Organization at various times alleged that the Carrier had violated Rule 24 and Paragraph (2) of Rule 21 of the Agreement effective March 1, 1951, Rule 15-8-J of the March 19, 1949 Conference Committee Agreement, and a Carrier's commitment contained in a March 16, 1951 letter from the Carrier to the Organization's General Chairman, in the Carrier's non-payment to the Claimant for deadheading time from Barnhardt, Missouri to Pensacola, Florida. Of these allegations, suffice it to say that it is apparent to the Board that Rule 24 of the March 1, 1951 Agreement, Rule 15-8-J of the March 19, 1949 Conference Committee, and the provisions of the Carrier's March 16, 1951 letter to the Organization have no applicability to the factual situation in this claim. However, this is not true of Paragraph (2) of Rule 21 of the March 1, 1951 Agreement, which provides as follows:

> "Employes deadheading on instructions of the Railway when not acting as messenger on equipment, will be paid straight time for regular working hours. When sleeping accommodations are not furnished, they will be paid at pro rata rate for actual riding time outside of regular working time."

The Carrier contended on the property that the above-quoted paragraph is not applicable to the facts in this case on the grounds that the Claimant was not instructed by the Carrier to deadhead to Pensacola and that the Claimant did not deadhead because he spent the weekend at his home prior to traveling to Pensacola.

We do not believe either of these Carrier contentions to be tenable. Although it is true that the Carrier's instructions to send the equipment that the Claimant had been operating to Pensacola did not by its express terms also instruct the Claimant to go to Pensacola, nevertheless it seems to the Board that there was a necessary implication that the Claimant was to report to Pensacola. One needs only to ask "Where else indeed was the Claimant to go except Pensacola to continue working for the Carrier?", to conclude that the Carrier intended that the Claimant report to work on February 13, 1967 at Pensacola and that the Carrier's February 6, 1967 message was in effect an instruction to the Claimant that he proceed to Pensacola. As for the Carrier's contention that the Claimant did not deadhead because he stopped over the weekend at his home before traveling to Pensacola, we find nothing in the Agreement to support this defense to the applicability of Paragraph (2) of Rule 21. Also, in this regard, we concur in the statement found in Award No. 12517, "That they (he) may have visited their (his) homes (home) is incidental."

Therefore, the Board finds that the facts in the record in this case meet the conditions of Paragraph (2) of Rule 21 so as to require the payment by the Carrier of pro-rata for the time spent in traveling to Pensacola. The Claimant was not acting as messenger on equipment; he was deadheading on instructions of the Carrier, and, there is no evidence in the record that sleeping accommodations were furnished to the Claimant.

Notwithstanding this finding, the Board finds itself in the following dilemma. There is a distinct possibility that Paragraph (3) of Rule 21 may have been applicable in this case, and that if this were so, the Claimant might

well not be entitled to any pay for traveling to Pensacola. Paragraph (3) of Rule 21 reads as follows:

> "Where outfit cars are moved for such distances as will result in the outfit cars being in transit for the entire spread of hours constituting the employe's work day for more than one day, the employe may, for his own convenience, ride passenger trains arriving at destination of the outfit before 10:00 A. M. of the day the outfit is scheduled to arrive at destination without loss of time to the employe, with the understanding employe will not be reimbursed for any expense incurred for meals, lodging or other travel expenses, and will not be paid for riding, traveling or waiting time."

It is apparent to the Board that Paragraph (3) of Rule 21 constitutes an exception to the provisions of Paragraph (2) of Rule 21. In other words, Rule 21 must be read as a whole and no one paragraph can be read in isolation from the other paragraphs. If the facts were in the record on the property regarding outfit cars, this Board would have no hesitation in interpreting Paragraph (2) of Rule 21 and Paragraph (3) of Rule 21 in the light of each other, and, without deciding the question, the result in this case might be different. However, the fact of the matter is that the record on the property is devoid of any facts which make it possible for the Board to determine the applicability of Paragraph (3) of Rule 21 to this claim, and consequently the Board is precluded from a consideration of that paragraph in its determination of this case. Nevertheless, the Board wishes it to be clearly understood that the decision in this case should not be used for any precedential value in any future claim where the facts in the record on the property would permit the Board to consider the Rule 21 in its entirety in its determination.

For the foregoing reasons, the claim will be sustained.

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 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

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 20th day of February 1969.

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