

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Maintenance Gang Foreman G. E. Rockey for the time he was held on duty during his assigned meal periods on April 9 and 11, 1968. (System File 10-P-293/L-126-1206.)

(2) Maintenance Gang Foreman G. E. Rockey now be allowed two (2) hours' pay at his pro-rata rate because of the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned as foreman of Maintenance Gang No. 219, with an assigned meal period from 12:00 noon to 1:00 P. M.

On April 9, 10 and 11, 1968, Maintenance Gang No. 219 was assigned to surface and line a section of track in the vicinity of Courtland, Kansas. Tie Tamper PB-11 and Track Liner TL-10 were furnished to and used extensively by the gang in the performance of the work. While within the limits of the work area, the gang personnel and the track machines were protected against trains by a Form U Train Order, which prohibits trains from entering and/or passing through the area designated therein during the time period specified until or unless the engineer of the train is authorized to do so by the foreman in charge of the work. On each of these dates, the Form U Train Order was in effect from 8:00 A. M. to 4:00 P. M.

On each of the aforesaid dates, the claimant was required to remain on duty at the work site during the noon meal period so as to be available to provide the authorization needed to permit any train that might approach the restricted work area to proceed through without unnecessary delay.

On April 10, 1968, a train arrived at the work area during the noon meal period, requiring the claimant to perform the functions necessary to permit its immediate passage. On the other two (2) dates there was no train traffic during the meal period. The Carrier compensated the claimant at his straight time rate for the April 10th meal period but failed and refused to compensate

CARRIER'S EXHIBIT G-(1) - Letter dated January 9, 1969 to General Chairman confirming conference; Bcc to Superintendent requesting information on instructions issued claimant.

CARRIER'S EXHIBIT G-(2) - Memo from Superintendent dated January 24, 1969 in response to request.

CARRIER'S EXHIBIT G-(3) - Memo from Senior Assistant Division Engineer - Track to Superintendent showing nature of instructions.

CARRIER'S EXHIBIT G-(4) - Wire dated February 6, 1969 to Superintendent requesting further information on responsibility of Foreman during noon meal period.

CARRIER'S EXHIBIT G-(5) - Memo, dated February 19, 1969 from Acting Superintendent to G. E. Mallery in response to wire.

CARRIER'S EXHIBIT H - Letter from G. E. Mallery to General Chairman reaffirming denial of claim under date of February 28, 1969.

CARRIER'S EXHIBIT I - Letter rejecting Carrier's decision dated March 5, 1969 where General Chairman quotes from alleged instructions issued claimant.

CARRIER'S EXHIBIT J-(1) - Letter dated April 3, 1969 from G. E. Mallery to General Chairman in response to alleged instructions.

CARRIER'S EXHIBIT J-(2) - Letter of March 27, 1969, from B. B. Brenton, Acting Superintendent, refuting contention that alleged instructions were issued.

CARRIER'S EXHIBIT K - Copy of modified or revised operating rules effective January 1, 1967 pertaining to the handling of Form U Train Orders (Rule 10(i)).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant predicates his claim on the basis that he was required by Carrier to remain on duty during his meal periods on April 9 and 11, 1968.

Claimant's position is that it always has been compulsory for Maintenance of Way foremen, whose gangs are engaged in work that is protected by a Form U Train Order, to remain on duty and available at the work location during the entire time the train order is in effect; that Carrier issued such instructions in a letter given to all Maintenance of Way foremen and other supervisory forces; that Carrier violated the provisions of Rule 23 of the Agreement when it required Claimant to remain on duty during his lunch periods while the Form U Train Order was in effect; that Claimant is entitled to be paid for the standby service inasmuch as his time was not his own and he was not free to absent himself from the work site or do anything that would make him unavailable to clear any trains passing through his work area; that the Agreement does not contemplate that an employee be expected

to perform gratuitous service for Carrier; that the specific service performed by Claimant during his noon meal periods was "work" within the intent and meaning of the Agreement.

Carrier's stand in regard to this claim is that Claimant did not actually work during his lunch period on said dates; that Claimant received a morning lineup in regard to Form U Train Orders indicating the number of trains due past the work site and their scheduled time of arrival, and since no trains passed through his territory during his meal periods on said dates, then Claimant could not have actually worked his meal periods and thus Claimant was free to observe his meal periods; that Claimant was never instructed by proper authority to remain on duty during his noon meal period; that the only specific instructions given were that if at any time trains passed through from U Train Orders during the noon hour, he would remain and would be paid the noon hour; that the instructions cited by Petitioner, namely "to be on hand" cannot be equated with remaining on duty and that said alleged instruction is not an absolute mandate requiring a foreman to work his meal period.

Claimant originally submitted claims for working his noon lunch period on April 9, 10 and 11, 1968. Carrier, after checking its records found that on April 10th, two trains were issued the U Form, namely OFM 1338 at Courtland at 9:51 A. M. and No. 60 at Courtland at 10:38 A. M.; that on April 10, First No. 60, Courtland at 10:41 A. M., Second No. 60 by Courtland at approximately 12:44 P. M.; that on April 11, No. 60 by Courtland at 11:14 A. M. Carrier paid Claimant for the noon hour lunch period on April 10 as a result of Second No. 60 passing Courtland at 12:44 P. M., during Claimant's lunch hour period of 12:00 Noon to 1:00 P. M. Carrier denied the claim for the dates of April 9 and 11 account of no trains passing through his area during his set lunch period, and thus claiming he did not perform any work on said dates during his lunch period.

Claimant relies on the instructions in regard to U Train Orders given by Carrier to Maintenance of Way Foremen, in particular the instructions reading as follows:

"Failure of foreman to be on hand at all times while the train order is in effect may result in serious and unnecessary delay to trains. Rule 27 requires the Engineer of a train to stop short of locations where train order indicates red conditional stop sign will be placed (even though no such sign is displayed) until authorized to proceed, either orally or by proceed signal with green flag."

Claimant's argument is that he would be subject to discipline if he failed to conform to such instructions as requiring him to be on hand at all times while the train order is in effect.

Is the Claimant entitled to payment for working the noon lunch period only when a train passes through his area on said lunch period, or is he entitled to payment for said lunch period when a U Train Order is in effect and no train passes through his area during said period?

We believe that when a U Train Order is in effect, as in this instance, Claimant was required to remain on hand at all times in order to avoid any

unnecessary train delays and work with the dispatcher and engineer of any through trains so as to insure the safe passage of said trains through the work area. Claimant was thus required to perform service of a standby nature and in effect did perform service regardless of the fact that no trains passed through his work area on the dates in question during his noon lunch hour period.

As was said by this Board in Award No. 1675:

" . . . Thus we find that Ashford was required to be ready for service during this period of time. It was stand-by service. It was of value to the Carrier or otherwise it would not have required Ashford to have been subject to call during this period of time. As someone has said, 'They also serve who only stand and wait'."

Claimant, having performed said work during his noon lunch hour period, is therefore entitled to compensation under the terms of Rule 23 of the Agreement, and thus we must sustain the claim.

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 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 9th day of October, 1970.