

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20897
Docket Number MW-20982

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Atchison, Topeka & Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it refused to compensate Extra Gang Foreman A. M. Lopez (Position 2664) for services rendered during his meal period on February 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 22, 23, 24, 25, 28 and 29, 1972 and for each subsequent date that the claimant protected a Form "U" train order during his meal period. (Carrier's File 130-272-7)

(2) The Carrier shall now allow Claimant Lopez fifty (50) minutes of pay for each of the dates specified in Part (1) hereof and for each date subsequent thereto that he protected a Form "U" train order during his meal period.

OPINION OF BOARD: The Claim herein is based on the contention that Carrier failed to compensate Claimant for service during his meal periods while Form "U" train orders were in effect.

It is agreed that a Form "U" order involving speed restriction was in effect during the dates in question; it is also conceded by Carrier that Claimant may have spent a few minutes flagging trains during his lunch hour on a few of the dates in question, and was not compensated for that service.

Petitioner's position is based on the well established doctrine that stand-by service is compensable. Award 18153 is cited in support of this position in a similar dispute involving Form "U" train orders. The Organization argues that in that case and this dispute a train order was in effect which required administration by the foreman. Further, it is contended that whether a Form "U" train order is a "Stop" order or a "Speed Limit" order is irrelevant since in both instances a signal or verbal permission from the foreman in charge is required for a train to proceed through the area.

Carrier argues that no service was required of Claimant during his lunch period by any of its rules, or by any special instruction. Carrier maintains that any flagging he did was voluntary, during his lunch period, and hence was not compensable. Carrier asserts that under a "Speed Limit" order, as in this dispute, it is unnecessary for an engineer to stop

his train unless he sees that men and/or machines are fouling the track. Carrier states categorically that a foreman working under a "Speed Limit" order who has cleared the track of men and machines and then began his meal period, has no obligation to perform any flagging upon arrival of a train at the working area. In the handling on the property, Carrier stated:

"... a 'Speed Limit' order does not require that a train passing through an area where machines and/or men are working come to a complete stop unless such machines and/or men are actually fouling the track. Rather, such an order only requires that the train travel at a certain designated speed and be prepared to stop; it does not require that the train come to a stop and proceed only after the foreman has flagged it through. It is obvious that such an order does not require a foreman to flag a train through his area. Furthermore, Foreman Lopez was not instructed either verbally or in writing to remain on duty during his lunch periods in order to flag trains through his area."

In evaluating the relevance of Award 18153 to this dispute, we find no fault with the reasoning presented in that dispute. However, there are two significant distinctions to be made in the facts in the two cases. In the earlier dispute we were dealing with "Stop" orders, wherein the engineer of any train coming to the area was compelled to stop and await a proceed signal from the foreman; in this case we are concerned with a "Speed Limit" restriction, with no signal necessarily required. In the instant dispute Claimant was not required to perform flagging (or any other service) during his meal period; in Award 18153 the foreman had received specific instructions that he should flag trains, as required, during meal periods and that he would be compensated for such work. On a factual basis, therefore, the instant dispute may be distinguished from Award 18153.

The controlling question may be posed then as whether Petitioner's interpretation of Carrier's operating rules is correct. Initially, it must be noted that there is no evidence that at any time in the past has Carrier interpreted the Form "U" Speed Limit operating instructions to require a Foreman to stand-by during his meal times. Further, it is quite clear that Carrier has the sole right to make, change as well as interpret operating rules; if such actions are consistent and do not violate provisions of the applicable Agreement this Board has no right to tamper with them - nor does Petitioner. In this instance, Carrier insists that its operating rules do not and have not in the past required the stand-by presence of a foreman during his meal times under the circumstances of the Speed Limit restriction. Any service rendered by Claimant during the meal period must therefore be considered voluntary and cannot be used as the basis for a claim (Award 18369 and others). Under all the circumstances, as discussed heretofore, the Claim does not have merit and must be denied.

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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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1975.