

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21010  
Docket Number MW-20826

William M. Edgett, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Duluth, Winnipeg and Pacific Railway Company

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

(1) The Carrier violated and continues to violate the Agreement when it failed and refuses to allow travel time compensation to Speed Swing Operator E. G. Nyman and to other operators and welders for the first hour of traveling (or 30 miles) from their respective designated headquarters points to their respective work sites and also for the first hour of traveling (or 30 miles) in returning from their respective work sites to their respective designated headquarters points [Carrier's File R8310-28-C-2; General Chairman's File R-107(a)].

(2) The Carrier be required to pay Speed Swing Operator E. G. Nyman and each other operator and welder one hour of pay at their respective straight-time rates for each trip (going or coming) for which they were deprived of one hour of travel time pay.

OPINION OF BOARD: The question before the Board in this claim is whether speed swing operators and other operators and welders are to be paid under Rule 37 or 38 in traveling to and from their work sites. Rule 37 reads:

"RULE 37 - TRAVELLING OR DETAINED ON ORDERS OF RAILWAY

- 37.1 Employees when detained for conveyance and while travelling on orders of the railway to and from work outside of their regular sections or headquarters after regular hours shall be allowed straight time. When practicable to do so, boarding and sleeping cars shall be moved at other times than between the hours of 11 p.m. and 6 a.m.
- 37.2 Section foremen and sectionmen required to travel to or from work outside of regular assigned hours for snow, tie train, or auxiliary service in other than passenger cars, boarding cars, or auxiliary outfit, will be allowed time and one-half for time so occupied."

Rule 38 reads:

"RULE 38 - REGULAR, RELIEF, EXTRA OR TEMPORARY SERVICE  
EMPLOYEES - LODGING, MEAL AND TRAVEL EXPENSES

38.1 Employees (other than those referred to in Articles 24.1, 37.1 and 37.2) who are required in the course of their employment to be away from their headquarters point as designated by the carrier, including employees filling relief assignments or performing extra or temporary service shall be compensated as follows:

D. Except as provided for in Articles 37.1 and 37.2, if the time consumed in travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one hour, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time enroute, necessary to return to his headquarters point or to the next work location exceeds one hour, then the excess over one hour in each case shall be paid for as working time at the straight time rate of the job to which travelled. When employees are travelling by private automobile time shall be computed at the rate of two minutes per mile travelled."

The difference in pay between Carrier's view, which is that payment should be made under Rule 38 and the Employee's view, which is that payment should be made under Rule 37, is one hour. However, Rule 38 provides for computation of time at the rate of two minutes per mile when travel is by private automobile and so it is possible that in specific instances there would be no difference in the net amount due.

Rule 37 has been in the agreement for some time. Rule 38 was placed in the Agreement following the Award of Arbitration Board No. 298. The intention of the parties with respect to the payment of travel time could have been expressed more clearly. Carrier recognizes that the inclusion of the word "Regular" in the heading of Rule 38 is critical for acceptance of its view that Rule 38, rather than Rule 37, is to be applied. The reason that the word "Regular" is of such importance is that interpretation No. 40 of reconvened Arbitration Board No. 298 and interpretation No. 54 of the same Board, confined "that portion of Section II-D providing for the one-hour lag before travel or waiting starts/applies/only to employees in relief or extra service while traveling to or from a work location." Carrier believes that that interpretation is not applicable on this property because the parties placed the word "Regular" in the caption of Rule 38.

Thus, the Carrier bases its view that Rule 38 rather than Rule 37 applies on the positioning of one word in the caption of Rule 38. That word, says Carrier, not only changes the interpretation previously placed upon the language by Arbitration Board No. 298 but also makes Rule 37 inapplicable. Prior to the adoption of Rule 38 Claimant would have been paid travel time under the provisions of Rule 37. Rule 38 specifically excepts from its provisions persons covered by Rule 37. Carrier tries to read too much into the use of the word "Regular" when it bases a change in the interpretation of language which has had a settled meaning for the parties upon the introduction of one word in the caption of a Rule. This is not to say that the use of language in the caption is without meaning, all parts of the Agreement are to be given meaning. In reaching a decision on this claim the Board has balanced the provisions of Rules 37 and 38, including their accepted meaning, and determined that the use of the word "Regular" in the caption of Rule 38 is insufficient to override the accepted meaning and understanding of the language employed in the Rules.

Carrier has also taken exception to that part of the Claim which seeks compensation for persons other than the named Claimant. The record shows that the employees made claim for other machine operators and welders during the handling on the property and that Carrier did not raise any objection to the coverage of the claim. Therefore, it is a new issue, raised for the first time in the Submission to the Board, and under well-settled Rules comes too late. Carrier has argued that the matter is jurisdictional and, if the persons for whom claim is made were not readily ascertainable, that argument might have merit. Here it does not.

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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.