

Award No. 1078

Docket No. 1018

2-MP-CM-'45

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That under the controlling agreement and particularly Rule 7 (e), the carrier did not properly compensate the Monroe wrecking crew while in wrecking service at Tioga, Louisiana, from 1:15 P. M. January 16, to 7:00 A. M., January 25, 1944.

(b) That the carrier be ordered to additionally compensate the Monroe wrecking crew (Carmen W. F. Straughn, E. Saniford, L. L. Thompson and I. H. Redding and Carmen Helpers J. E. Weems and W. J. Jordan) for eleven hours at the time and one-half rate from 8:00 P. M. January 24, to 7:00 A. M. January 25, 1944.

EMPLOYEES' STATEMENT OF FACTS: On Sunday morning, January 16, 1944, Monroe wrecking crew, whose regular assigned hours at home point are from 7:00 A. M. to 4:00 P. M. with one hour for lunch, was called at 7:00 A. M. for major derailment at Tioga, Louisiana; crew, accompanied by wrecking outfit, departed from Monroe at 8:55 A. M., arriving Tioga 1:15 P. M. Upon arrival crew immediately went to work, working continuously and without rest until 4:00 P. M. the following day, January 17, in order to get main line open to permit the movement of troops, war materials and civilian necessities, both freight and passenger. Subsequent to clearing of main line at 4:00 P. M. January 17, crew was moved to Alexandria, Louisiana, six miles south of Tioga, where they were tied up for rest.

Next morning, January 18, crew returned to Tioga, commencing work 7:00 A. M. and working continuously until midnight, or a total of 16-11/12 hours. That night crew was again moved to Alexandria.

January 19, crew was returned to Tioga, commencing work 7:00 A. M. and working continuously until 9:00 P. M., or a total of 14-1/6 hours. That night crew tied up at Tioga.

January 20 crew checked in 7:00 A. M., out 10:40 P. M.—total of 14¾ hours.

January 21 crew checked in 7:00 A. M., out 9:10 P. M.—total of 13-1/6 hours.

January 22 crew checked in 7:00 A. M., out 9:40 P. M.—total of 13¾ hours.

January 23 crew checked in 7:00 A. M., out 11:30 P. M.—total of 15½ hours.

There is submitted herewith statement from the car foreman under whose direct supervision the wrecking crew worked while at Tioga, and statement from Howard Jones, the trainmaster in charge of operations at Tioga. The exhibits are marked Nos. 1 and 2 respectively.

POSITION OF CARRIER: That the employes have been properly compensated for services performed under rules of the working agreement between the carrier and System Federation No. 2, Railway Employees' Department, A. F. of L., effective July 1, 1936.

There can be no question but what this crew was relieved from duty from 8:00 P. M., January 24, to 7:00 A. M., January 25. Such time is not to be paid for under rules of the controlling agreement—paragraph (b) of Rule 7 provides:

"If during the time on road a man is relieved from duty for five (5) hours or more, such relief time will not be paid for . . ."

These men were relieved for a period in excess of five hours; actually relieved for a period of 11 hours—from 8:00 P. M., January 24, to 7:00 A. M., January 25.

In the presentation of this case to the management, the organization contends that the members of the wrecking crew should have been paid 11 hours additional pay at the overtime rate for the period of time from 8:00 P. M., January 24, to 7:00 A. M., January 25, on the theory that they were improperly released, whereas the management contends that the question of when employes are to be released from duty under such circumstances as prevailed in this case is a managerial function. The carrier feels that the controlling rules of the agreement as to compensation for the services performed by the wrecking crew have been fully complied with and there is no rule that would sustain the employes' claim that the members of this wrecking crew should be paid 11 hours pay at the punitive overtime rate for the 11 hours time that they were relieved from duty as such a contribution would be in direct conflict with rules of the agreement that specifically provide for no such payment being made.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The question which confronts us is one of fact. If there was wrecking service to perform on the morning of January 25, as contended by the carrier, then the claim would have to be denied. If the wrecking service was completed on the afternoon of January the 24th, as contended by the employes, then the claim will have to be allowed. Under the facts set out in this particular record this Division is of the opinion that the contention of the employes will have to be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1945.