

Award No. 1423

Docket No. 1342

2-TC-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 68, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- 1—That under the current agreement the carrier improperly compensated members of the Wrecking Crew at straight time in lieu of time and one-half for the rerailment of GTW Box Car No. 515648 during the period of 7:00 P. M. October 15 to 1:00 A. M. October 16, 1949, at their home point.
- 2—That accordingly the carrier be ordered to additionally compensate these Wrecking Crew Members, R. E. Jackson, S. J. Crotzer, J. L. Williams, J. E. Mayo, Marvin Baucom and Henry Hooper, at the time and one-half rate for their services during the aforesaid period of six (6) hours.

EMPLOYEES' STATEMENT OF FACTS: At Nashville, Tennessee, the carrier maintains a regular assigned wrecking crew which consisted in October, 1949, of the employees named in the above statement of claim hereinafter referred to as the claimants, with the exception of J. L. Williams, J. E. Mayo and Henry Hooper, who were called and used in the place of J. B. Bonds, Frank Staley and Roy Hedgepath, regular assigned members of the crew who could not be located at the time crew was called.

The carrier called these claimants for 7:00 P. M. on Saturday, October 15, 1949, to rerail GTW Box Car 515648 within the yard limits of their home station and they completed the assignment at 1:00 A. M., Sunday, October 16, 1949. For this service rendered outside of their regularly assigned hours of work they turned in as proper payment therefor, six (6) hours at the time and one-half rate, as same was the customary allowed rate of pay for wrecking service performed by wrecking crews at their home station, which is confirmed by the copies of statements, submitted herewith dated November 24, 1949, and February 12, 1950, respectively identified as Exhibits A and A-1, but to date the carrier has declined to pay these claimants for the six (6) hours of service at the overtime rate.

The agreement effective October 1, 1922, as subsequently amended is controlling.

They first state "Rule 99 specifically provides that the wrecking crew will be paid the straight time rate from the time called to leave until they return to their home station." That is absolutely correct.

They then completely stray from the provisions of the rule in stating "Rule 99 does not provide for the payment of the straight time rate for wrecking or rerailing work performed at home station." That is mere assertion and has no foundation in fact.

They further state "It does guarantee a minimum of four hours pay if the crew is called and not used at home station", but the rule may be searched in vain for such a provision. The rule states "When called and relieved after regular working hours at home stations, they shall receive pay for not less than four hours for each call", and it is clear from this language that a minimum of four hours at the straight time rate is provided for any wrecking service anywhere when called and relieved "after regular working hours at home station". This positively does not have the effect of removing wrecking service required at home station from the straight time provisions applying to such work away from home station, as alleged by employees. Further, claimants were used on this occasion, and the service required was not at home station, but was performed 11½ miles west of home station.

The first paragraph of Rule 3, Overtime, states in part "except as may be provided in rules hereinafter set out." Certainly Rule 99 is a rule "hereinafter set out" and is the governing rule in the circumstances of the instant case. Had the fourth paragraph of Rule 4, termed the call rule, been intended to apply to some specified wrecking service, then provision for the minimum payment under the circumstances recited in Rule 99, without qualification, is meaningless. It will also be observed that the minimum provided for in Rule 99 is not for two (2) hours and forty (40) minutes work or less, as provided in the fourth paragraph of Rule 4.

Award 448 of your Board, cited by employees, could have no relevancy to the instant claim, as it involved work of repairs to engine tanks at the shop, and had no connection whatever with wrecking service or any service by the assigned wrecking crew, and the issue concerned principally the meaning of the language of the fourth paragraph of Rule 4, termed the call rule.

Employees make the unsupported statement that the overtime provisions of the agreement have been applied in instances similar to the case now before your Board since the effective date of the current agreement, asserting this even after they were informed that wrecking service at a serious collision at Van Blarcom (at Charlotte Pike on Western Division main line) on Sunday, February 27, 1944, was paid for at the straight time rate only. Employees were also informed that on that occasion the time book shows notation by timekeeper to pay straight time on instruction of higher authority. It was also developed that on November 16, 1946, for work during the night at an accident in the train yard at shops, adjacent to the shop yard, the members of the wrecking crew called and used were erroneously paid at the overtime rate. Such a payment, however, "does not impose a requirement on the carrier that it be continued, if the rules do not contain such a requirement." See Opinion of Division, Award 191 of your Board.

Opinion of Division in that Award also states:

"We cannot read such a requirement into the rules. Rather, we must determine the dispute on what is already contained in the existing rules."

There is no provision in the rules for the payment of the overtime rate for wrecking service performed by the assigned wrecking crew, under which circumstances instant claim should be denied.

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.

Claimants were used after their regularly assigned hours, in wrecking service at the terminal where their home station is located, for a period of six hours. The question is whether they are entitled to be paid the overtime rate, or at the straight time rate as was done.

Rule 4, the first paragraph, reads:

"For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis with a minimum of one hour for any such service performed."

Rule 99, a special carmen's rule, governing wrecking service provides that carmen and helpers assigned to wrecking service:

A—"shall be paid hourly rates on the straight time basis from time called to leave until they return to their home station, board to be furnished by the company . . ."

and

B—"When called and relieved after regular working hours at home stations, they shall receive pay for not less than four hours for each call . . ."

Rule 108 provides:

"Except as provided for under the special rules of each craft, the general rules shall govern."

Rule 4 is a general rule. That portion of Rule 99, quoted as "A" above is construed to be applicable to Road Service Away from the Terminal where the home station is located. That portion of Rule 99, quoted as "B" above is construed merely to establish a minimum of four hours for each call whether at the home station or away therefrom when the call is outside the home station working hours. There is, therefore, nothing in Rule 99 that excludes the operation of Rule 4 to service outside regular working hours when performed at the terminal. As there were six hours' service involved, claimants are entitled to time and one-half therefor under Rule 4.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1951.