

Award No. 4117
Docket No. 3930
2-GN-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement commencing at 3:30 A.M. August 10, 1959 when it improperly called Carman Harry Burger to accompany the wrecking outfit to Elk, Washington as a cook on the outfit.

2. That accordingly, the Carrier be ordered to compensate Carman Ellis Wright at the applicable time and one half rate as per the following:

August 10, 1959	9½ hours	August 13, 1959	10½ hours
August 11, 1959	10½ "	August 14, 1959	10½ "
August 12, 1959	10½ "	August 15, 1959	24 "
		August 16, 1959	8½ "

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Co., hereinafter referred to as the carrier maintains at its Hillyard Shop, Spokane, Washington a wrecking outfit and regularly assigned wrecking crew made up of carmen regularly employed at Hillyard Shop.

Carman Harry Burger is regularly assigned as a carman on the Hillyard Rip Track 7:00 A.M. to 3:30 P.M. Monday through Friday rest days Saturday and Sunday. In addition thereto, Carman Burger is regularly assigned to the wrecking crew as a cook.

Carman Ellis Wright, hereinafter referred to as the claimant is regularly assigned on the Hillyard Rip Track as a Carman 7:00 A.M. to 3:30 P.M., Monday through Friday, rest days Saturday and Sunday. In addition thereto, Claimant Wright is regularly assigned relief cook on the wrecking crew.

Carman Harry Burger, the regularly assigned wrecking crew cook was assigned and took his annual vacation commencing Monday, July 27 through

Award No. 6359, ORT v. StLSW, Referee McMahon:

" * * * we must hold that the burden of proof is on the one who asserts the claim. Mere words that a violation has occurred are not sufficient without positive evidence to substantiate the allegations as made."

Award No. 7964, BofMWE v. CGW, Referee Lynch:

"We have consistently held that the burden of presenting positive and substantive evidence in support of a claim is upon the party seeking its allowance. (Awards 7584, 7362, 7353, 7180, 7179, 6964 and 6748 among many others.) Petitioner has simply failed to sustain the burden of proving a violation."

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The assignment of Carman Harry Burger to wrecking service at Elk, Washington, on August 10, 1959 was not a violation of Memo No. 33, since that document applies only to ordinary overtime. As evidenced by Awards 2039 and 2554 of this Board, the organization has always insisted that wrecking service was not ordinary overtime.

2. Even if wrecking service is included within Memo No. 33, Carman Burger was eligible for such service after 12:01 A.M. on August 10, 1959, because that was part of his first regular workday after his vacation.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees 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.

Parties to said dispute were given due notice of hearing thereon.

Carman Burger is regularly assigned at Hillyard as a carman on the first shift, 7:00 A.M. to 3:30 P.M., Monday through Friday. He is also regularly assigned as a cook for the wrecking crew, which under Rule 22(b) is paid (except for rest periods) at time and one-half for all time working, waiting or traveling, and not at straight time for regular shift hours and time and one-half for other or "overtime" hours.

On Monday, August 10, 1959, he was called out on his regular wrecking assignment at 3:30 A.M. Because his vacation had expired on the preceding Friday, and his next regular carman's shift would not begin until Monday morning at 7:00, the claim is that he was improperly called for overtime work, not having given prior notice under Memorandum of Agreement No. 33, that

he would be available for overtime service during the two days immediately following his vacation.

Burger was called out for regularly assigned wrecking service, not for overtime service, to which Memorandum of Agreement No. 33 relates. It is therefore unnecessary to decide whether his work performed before 7:00 A. M. on Monday is to be considered as performed on Sunday, the second day after his vacation.

Carman Burger, the regularly assigned wrecking crew cook, was properly called and served on his regular assignment, and claimant Wright, the regularly assigned relief cook, was not entitled to be called.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February 1963.