

The Second Division consisted of the regular members and in addition Referee Louis Yagoda when award was rendered.

Parties to Dispute: (System Federation No. 21, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the controlling Agreement when on April 3, 1972, Carman Mike Ross, Birmingham, Alabama, was not allowed to return with the derrick crew to a derailment at Bynum, Alabama.
2. That the Carrier be ordered to pay Carman Ross seven (7) hours pay at straight time rate for waiting to return to the derailment plus fifty-five (55) hours pay at the rate of time and one half, the amount of overtime he lost by not being allowed to return to the derailment.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

At the time of the subject occurrences, Claimant occupied a regular assignment as car repairer at Norris Yard, Birmingham, Alabama on the first trick, 7 A.M. to 3 P.M., Sunday through Thursday, with Friday-Saturday rest days. He was also an extra member of the Birmingham (Norris Yard) wrecking crew.

On Good Friday morning, March 31, 1972, the Birmingham derrick and crew were engaged in clearing a derailment at a point west of Birmingham on the Northern Alabama district. Claimant was called as an extra crew member and used at that derailment because one of the regular crew members whom he replaced was not available when the wrecking crew was called for service away from home station.

At about 12:00 noon on the same day, Friday, March 31, 1972, the crew was notified that another derailment had occurred at Bynum, Alabama (a point east of Birmingham) and they traveled in company automobiles to that derailment. The wrecking crew (one of whom was Claimant) cleared the main line at Bynum at 3 P.M. Saturday, April 1, 1972. At that time, further work at the Bynum derailment was discontinued until Monday, April 3, 1972. The derrick was left at Bynum, and the crew men were taken in company automobiles to Birmingham where they went off duty at their home station about 5 P.M., Saturday, April 1, 1972.

Easter Sunday, April 2, 1972, was the first work day of Claimant's regular 7 A.M. to 3 P.M. assignment at Norris Yard after the Good Friday holiday. Claimant reported on said day to said assignment and worked one hour, thereby qualifying for the holiday pay for Friday, March 31, 1972 (Employees contend that this was done on advice of Foreman so that Claimant could qualify for holiday pay).

On that same Sunday afternoon, General Foreman advised Claimant that the regular crew members whose vacancy Claimant had filled at the Birmingham derailment had marked up for wrecking service and, accordingly, would be used in displacement of Claimant.

We find Employees' reliance on Rule 10 to be mistaken in that the instant situation is not a case of an employee being relieved from duty while away from home. Claimant was called to fill the vacancy of a regularly assigned absent derrick crew man. Claimant left that vacancy to assume his regular duties. When the crew returned to wrecker service the regular man was available and was properly given preference over Claimant.

Employees' assertion that Claimant worked on his regular assignment on Easter Sunday at direction or advice of General Foremen and Derrick Foreman is denied by them through Carrier. We cannot resolve this factual conflict and, accordingly, cannot reach consideration of what effect, if any, this has on the merits of the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of February, 1974.