

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

Parties to Dispute: { System Federation No. 114, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That the Carrier violated the terms of the Agreement when the Sparks, Nevada, Wrecking Crew Members John Zabala, Rick Flores, Bob Inman, Bud Inman and Elio Grassini were relieved of their wrecking assignment by being put on a freight train from Winnemucca, Nevada, the same freight train that had the relief outfit on it, to Sparks, Nevada from the relief outfit, arriving at 8:30 P.M. and were relieved at 8:30 P.M., October 11, 1978, and the remainder of the Sparks Relief outfit crew, G. Libro, returned to Sparks, Nevada with the Relief Outfit, arriving at 10:00 A.M., October 12, 1978, and was relieved at 10:00 A.M. October 12, 1978, and
- (2) Accordingly, the Carrier be ordered to additionally compensate Relief Outfit Crew Members John Zabala, Rick Flores, Bob Inman, Bud Inman and Elio Grassini, the compensation received by Relief Outfit Member G. Libro, or 13 hours and 30 minutes each, at time and one-half rate of pay.

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 waived right of appearance at hearing thereon.

This claim involves certain members of a relief outfit crew who returned to their home yard ahead of the crane assigned to their relief outfit and claim compensation until such time the crane returned to their home yard.

The Claimants, based in Sparks, Nevada, were called for a derailment which occurred on October 10, 1977 at Hunter, Nev., some 400 miles distant. Three of the eight members of the relief outfit crew left with the outfit. The remaining five members (Claimants) were transported by motor vehicle toward Hunter. While enroute to Hunter, the main line had been cleared of the derailment, obviating the need for the Sparks relief outfit and crew. The Claimants proceeded to Carlin, Nev. where their relief outfit had been stopped.

At 7:00 A.M., October 11, 1977, the Sparks relief outfit with crew aboard was attached to a freight train and proceeded back to Sparks; however, upon arrival at Winnemucca, Nev., the crane of the relief outfit was set out in order to avoid delay to the train due to speed restrictions applied to the crane which would have resulted in the train crew tying up under the Hours of Service rule.

All of the members of the relief outfit crew (including Claimants) except Carman G. Libro rode from Winnemucca to Sparks aboard the relief outfit cars arriving at Sparks at 8:30 P.M., October 11, 1977. Carman Libro remained with the crane of the relief outfit at Winnemucca and returned aboard that crane on a freight train that arrived in Sparks at 10:00 A.M., October 12, 1977.

The claim before us is for an additional 13½ hours' pay at the applicable overtime rate October 11 and 12, 1977 to cover the additional time required by the relief outfit crane to return to Sparks.

Citing the dictionary definition of "accompany" as to "go with", petitioner asserts that Carrier violated Rule 111(b) by not allowing the crew to accompany the relief outfit from Winnemucca to Sparks. Rule 111(b) reads:

"When relief outfit is called for derailments or accidents, outside of yard limits at home point, the regular assigned crew, if available, will accompany the outfit."

Although it acknowledges that on some previous occasions some of the crew members did not physically accompany the outfit, nevertheless asserts that in each of these instances all members of the relief outfit crew have been compensated for the same number of hours as those members who actually travelled with the outfit. This assertion, made in Petitioner's Ex Parte Submission, was not supported by substantive evidence furnished during the handling of the dispute on the property. By the same token, Carrier submitted no effective rebuttal.

Carrier's position is that no service was performed by the relief outfit crew in connection with the derailment, the relief outfit equipment enroute to the scene of the derailment having been diverted before reaching the wreck site; that Carman Libro merely rode aboard the crane of the relief outfit which was handled into Sparks on a separate train; and that there is no basis for compensating the entire relief outfit crew until the arrival of the crane back to Sparks. Carrier insists that it complied with Rule 15, cited by Petitioner, by compensating Claimants from the time they were called until their return to their home point. Since no service was performed in this case, Carrier argues, "The time involved in this case amounted to travel time en route to a point where the outfit and crew were stopped and they proceeded back to their home yard". Rule 15 states, in part:

"RELIEF OUTFIT SERVICE

Relief outfit service outside of yard limit boards at home point, will be paid for at the rate of time and one-half for all time whether working, waiting or traveling, from time called until return to home point and released by foreman; ..."

In Carrier's view, Rule 111(b) does not prohibit it from releasing relief outfit crews prior to return of their relief outfit equipment to its home base. As confirmation of its position, Carrier refers to the Official Interpretations of the Rules of the National Agreement between the U. S. Railroad Administration and the Employees represented by the Railway Employees' Department, issued in 1920, which states:

"Concerning the question raised in your submission as to whether or not it is permissible to send wrecking crew to their home terminal on a passenger train and bringing wrecking outfit back on a freight train, will advise the rule (Rule 158) does not prohibit such practice. ..."

We have reviewed the Awards cited by both parties and they go both ways on the question of whether wrecking crew members are entitled to compensation for the time between the departure of a wrecking outfit from the wreck site and its return to its yard when the crew members do not accompany the outfit on the return trip to home base.

Carrier relies heavily on Second Division Awards 6323 and 6332. In the case decided by Award 6323, the wreck crew performed part of the rerailling work, after which work was suspended for several days because of hazardous conditions due to the derailment of chemical tank cars. When the work was suspended, the crew was sent home by highway vehicle and the wrecker outfits by freight train, the latter arriving several days after the crew. The outfits and crew returned to the scene of the derailment three days later, completed their work, and both crew and wreckers returned to their home station. The claim was made for the time during which the wrecking outfits remained at the scene of the derailment, after work was suspended; before returning to the home base. The Board denied the claim, stating:

"It is obvious from the record that no wrecking service was performed on the dates in question. We further find that the Claimants worked their regular jobs on the specific dates and suffered no loss of earnings. We find no rule violation in the instant case.

Rule 80 does not prohibit Carrier's action or does it require that the crew stay with the equipment when it is standing idle and not being used to perform wrecking service."

The fact situation in Award 6323 is not applicable to that involved in the case before us.

In Award 6332 the crew accompanied the outfit to the derailment. The crew was returned to headquarters by auto after completing their assigned duties. The claim was for the time between departure from the wreck site and the return of the wreck outfit to its yard, based on the following rule:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. ..."

The Board denied the claim stating that the rule "does not provide for crews to accompany an outfit on a return trip."

The Board, in Award 6332 also discussed Awards 5678 and 5784, sustaining awards which involved claimants who did not accompany the outfit going to and coming from a wreck or derailment site. Awards 5678 and 5784 were cited by Petitioner in the case resulting in Award 6332 and in the instant case.

In discussing Awards 5678 and 5784, the Board in Award 6332 commented:

"Award 5678 (Referee Ritter) sustained the claim citing awards involving time to a wreck site without discussing the question of the application of Rule 113 to the return trip. Award 5784 (Referee McGovern) sustained a claim also without considering the applicability of Rule 113 to the return trip."

It must be pointed out, however, that Award 5784 did consider the return trip in its Findings in sustaining the claim:

"The Organization 'Arguendo' states the wrecking crew must 'physically' accompany the outfit. The language of the rule is clear and precise and in the absence of mutually agreed upon interpretation by both parties means precisely what it says. The crew will accompany the outfit outside yard limits. This connotes the trip to the derailment and back to the home station. Compensable time therefore should be from 7:00 A.M., the time of departure from Spokane to 7:00 P.M., the time of arrival back at Spokane. ..."  
(Underlining added)

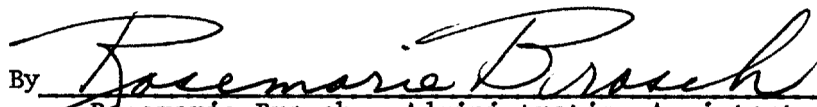
The Board, in Award 5678 sustained a claim that the Carrier had failed to permit Claimants to accompany the wrecking outfit while in transit to and from the scene of derailment outside of yard limits, citing "The overwhelming number of awards sustaining the Organization's contention in this case, ...". We are inclined to follow the Board's reasoning in this and similar cases and, therefore, we will sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1980.