

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Maine Central Railroad Company
(Portland Terminal Company

Dispute: Claim of Employees:

1. That the Portland Terminal Company violated the current Agreement; namely, Rule 4, Paragraph (f), 7, 96 and the Wreckdozer Agreement, dated March 8, 1982, at the scene of a derailment at Brunswick, Maine, on August 2, 1983, by releasing Carmen R. E. Downs, M. J. Brown, J. B. Hawkes and J. G. Darnielle from wrecking service for a 6 hour period, after the Claimants had performed 23 hours and 45 minutes of wrecking service, thereby depriving claimants of 6 hours of double time plus removing them from the double time rate for the remainder of their service performed at the Brunswick, Maine derailment.

2. That, accordingly, The Portland Terminal Company (hereinafter referred to as the Carrier) be ordered to additionally compensate Carmen R. E. Downs, M. J. Brown, J. B. Hawkes, and J. G. Darnielle, (hereinafter referred to as the Claimants) six (6) hours at the carmen's double time rate of pay for hours from 12:30 P.M. to 6:30 P.M. and the difference between the straight time rate, and time and one-half rate of pay and the double time rate of pay for all hours of service performed by the Claimants from 6:30 P.M. on August 2, 1983 and 9:00 A.M. on August 3, 1983; or the equivalent of ten (10) additional hours at the double time 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 employes 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.

Claimants, who are regularly assigned to duties at Rigby Yard, South Portland, Maine, left at Noon on August 1, 1983, to report to a derailment site to perform work as ground crew on a Wreckdozer.

After working continuous duty for twenty-nine and a half (29 1/2) hours and thirty and a half (30 1/2) hours respectively, Claimants were released on August 2, 1983 and instructed to take six (6) hours rest and report back to the derailment site.

Claimants returned to the wreck scene on the same date and commenced work until their release from wrecking service at 10:00 A.M. on August 3, 1983.

The interruption of six (6) hours in service precluded Claimants returning to the double time rate of compensation received prior to their rest break. The record shows they received compensation at time and one-half rate for the additional hours worked after taking rest.

It is undisputed that other wrecking service employees working at the scene and Carmen from the Waterville Relief Train Crew on the East end were allowed to continue working without taking rest periods to work as many hours as Claimants.

The Organization denies that Claimants agreed to take the rest period or that they were too tired to perform their duties.

The Organization contends Carrier has no contractual right to relieve Claimants from service against their wishes. In support thereof, Organization asserts Carrier violates Rule 4(f) and Rule 7(a), (b) and (f) of the Agreement.

Carrier concedes that Rule 7 does not provide for any rest period other than five hours or more before starting work and on completion of work at the wreck scene. However, Carrier asserts it is within the province of Management to release employees for rest whenever possible to insure their own safety and of those working around them.

Carrier maintains ground crew work with a Dozer is very arduous work and to have worked the Claimants for a forty-six (46) hour period without rest would have been unreasonable and dangerous to their well being.

Carrier also asserts that it is common past practice to put rerailling crews up for rest in similar circumstances.

After a careful review of the record, the Board finds no reason to conclude that Carrier acted in an arbitrary or discriminatory manner to circumvent the pay rules to deny the Claimants proper overtime compensation. The record is replete with evidence that employees are contractually entitled to work long periods of time as a matter of right in order to earn double time.

Although other crew members on the scene may have worked an extended period of time without a rest period, it is not within the purview of the Board's authority to substitute its judgment for that of Management concerning the necessities of the situation, especially under emergency road conditions. Even though Organization disputes that Claimants experienced fatigue, in the Board's opinion, Claimants were well advised to rest at that point.

The record reveals that the applicable overtime rate in this dispute was properly computed and paid to Claimants. Therefore, the Claim cannot be sustained.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1987.