

Award No. 790

Docket No. 721

2-Sou-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That wrecking service employes, namely, J. W. Smith, R. Bammer, W. C. Buckman, G. Jones, C. Kemper, H. Deffendahl, Gus Bates and C. Hamer be compensated at overtime rate of pay from 10:00 P. M., April 17, 1940 to 7:00 A. M., April 18, 1940, account of being relieved from duty subsequent to completing wrecking job they were called to perform at Taswell, Indiana.

EMPLOYES' STATEMENT OF FACTS: On April 16, 1940, Princeton wrecking crew was called for wrecking service account of head-on collision at Taswell, Indiana, leaving Princeton, Ind., at 10:00 A. M. that morning. They arrived at Taswell in due course, and worked up until 9:30 P. M. and were relieved at the scene of the accident for the movement of trains and the picking up of the wreck was deferred until the A. M. of the 17th. They completed the picking up of the wreck and cleared the tracks at 5:30 P. M.; subsequently the crew and equipment was moved back to Huntingburg, Indiana, some 22 miles or within 42 miles of home, and relieved from duty at 10:00 P. M. They were called back into the service at 7:00 A. M., April 18, 1940.

POSITION OF EMPLOYES: Employes allege that Southern Railway violated provisions of Rule 10 of the current wage agreement in its application to wrecking service account of relieving crew from duty subsequent to picking up wrecked engines and clearing tracks.

Southern Railway Agreement
Effective March 1, 1926

Rule 10 Overtime—Road Work

“An employee regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track, or inspection point, will be paid from the time ordered to leave home station until return for all time worked in accordance with the practice at home station and straight-time rate for all time waiting or traveling.

Employees used in this service will be paid as above, except that employees taken out of actual service on Sunday or holiday will be paid not less than would have been earned had they remained at work at home station.

ing cars, which usually accompany wrecking crews, are parked or camped that rest time of five hours or more may be excluded from time paid for.

We submit that there is no equity in the contention that other conditions must also attach; i. e., that rest period may only be given at certain periods with relation to the progress of the emergency work and at the site of such work and not elsewhere.

CONCLUSION:

The respondent submits that it has conclusively shown:

1. That, in the instant claim, it was a part of the work of and service for which the wrecking crew was called, not only to pick up the wrecked and disabled equipment, but to accompany it to its home point, and that this service could not be completed as a continuous journey from Taswell, Ind., the scene of the accident, to Princeton, Ind., the home point of the wrecking crew, because (1), the disabled equipment was in such condition as to make it unduly hazardous to proceed with it after nightfall, and (2), it was necessary to give the train crew hauling the disabled equipment and wrecking outfit a rest period under the 16-Hour Law, and there was not available, therefore, any means by which the wrecking crew could be conveyed to its home point.

2. That the language of the rule contemplates that rest granted under the circumstances of this case is not to be paid for and that the interpretation cited in support of the claim was based on an entirely different question, in no way analogous to the circumstances of the instant claim, and does not, therefore, lend any support to its validity.

3. That the practice on Southern Railway and associated lines, ever since Rule 10 was promulgated by the U. S. Railroad Labor Board, has been to afford rest to members of wrecking crews at appropriate hours without pay for the rest periods under circumstances exactly similar to those in the instant case, and that, in the several instances cited, the practice was not protested and no claims were presented.

4. That the claim is insupportable under the rules, and is entirely lacking of any merit in equity.

For these reasons, your respondent asks that petitioner's claim be, in all respects, 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.

This record shows that the crew for which claim was made were waiting at Huntingburg, not because of anything connected with the wreck, but because the train crew was tied up under the sixteen hour law. Under these facts they are entitled to the compensation claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1942.