

Award No. 1028

Docket No. 969

2-CRI&P-CM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Joseph Fleming and Aaron Colnon, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: a. That this carrier, on September 22, 1943, violated the controlling agreement and particularly Rule 9, by the arbitrary release of their Pratt, Kansas wrecking crew, subsequent to completing a wrecking assignment at Dalhart, Texas.

b. That the following wrecking service employees, namely, Carmen Ben W. Holland, Ralph W. Laswell and Arthur Schouten, be compensated for eleven (11) hours each at the time and one half rate computed on the basic hourly rate of eighty-eight (88¢) cents per hour, and that Carmen Helpers Earl C. Kettering and Aubrey Smith be compensated for eleven (11) hours each at the time and one half rate computed on the basic hourly rate of seventy (70¢) cents per hour.

EMPLOYEES' STATEMENT OF FACTS: This carrier maintains a wrecking outfit at Pratt, Kansas. This wrecker has a regularly assigned crew, composed of carmen and helpers. The employees who were regularly assigned to this wrecker on September 22, 1943, were as follows: Carmen Ben W. Holland, Ralph W. Laswell and Arthur Schouten and Carmen Helpers Earl C. Kettering and Aubrey Smith.

At 6:00 A. M., September 22, 1943, the Pratt, Kansas, wrecking crew was called to go to Dalhart, Texas, to pick up a wreck; arriving at the scene of the derailment at 3:00 P. M., September 22, 1943, commencing work at 4:00 P. M., and working until 6:30 P. M., September 22, at which time they completed picking up the wreck. The wrecking outfit was placed on a siding in the Dalhart, Texas yards. At 7:00 P. M., September 22, the crew was notified they were released from duty until 6:00 A. M., September 23, at which time they would leave on their return trip to Pratt, Kansas, their home station.

POSITION OF EMPLOYEES: It is the contention of the employees that from the time the claimants in this dispute were relieved from duty at 7:00 P. M., September 22, 1943, subsequent to the completion of that particular assignment and until the time they were again returned to service at 6:00 A. M., September 23, 1943, to be returned to Pratt, Kansas, their home point, such time was clearly and definitely waiting time for the purpose of Rule 9, current agreement, reading as follows:

RULE 9. EMERGENCY SERVICE—ROAD

"An employee regularly assigned to work at a shop, enginehouse, repair track, or inspection point, when called for emergency road

and interpretation to Rule 9, as covered by Memorandum of Interpretations and Understandings in connection with the agreement of September 15, 1941, reads:

"The 5-hour rest provision in the second paragraph of this rule also applies to wrecking crews."

It is the position of the carrier that the second paragraph of the above-quoted provision of Rule 9 and interpretation thereto definitely permits the relieving of wrecking crews from duty and such relief time is not to be paid for providing it amounts to five hours or more and the men are permitted to go to bed either while traveling or at point to which sent to perform work. In the instant case these wrecking service employees completed their work at Dalhart at 7:30 P. M., September 22, 1943, and were relieved until 6:00 A. M., September 23, 1943, at which time the train departed for Pratt, their headquarters. During the period 7:30 P. M., September 22 to 6:00 A. M., September 23, sleeping accommodations were furnished and, therefore, in line with above-quoted rule and interpretation thereto, such relief time, amounting to five hours or more, was not paid for.

We have never on this property paid any employee under Rule 9 of the shopcrafts' agreement any time while riding or at point to which sent when relieved for five or more hours and sleeping accommodations were furnished, and this is the first claim filed by the employees requesting payment for such relief time.

In our discussions leading up to the adoption of Rule 9, this identical question arose and was discussed at which time it was definitely understood between the employees' representatives and the carrier that the five hours or more relief time need not be paid for when employees, while traveling or at point to which sent, were relieved from duty and permitted to go to bed for five or more hours, and for the purpose of recording that understanding, the interpretation appearing under Rule 9 in the Memorandum of Understanding quoted above was made.

As the employees involved were paid strictly in accordance with Rule 9 and interpretation thereto, there has been no violation of the agreement and we respectfully request declination of the employees' claim.

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.

The parties to said dispute were given due notice of hearing thereon.

This Division has held under similar rules that time held after completion of work at a wreck was waiting time within the meaning of the rule.

The wrecking crew in this dispute were released from duty at 7:30 P. M. until 6:00 A. M., the following morning, after completion of work at the wreck, and should be compensated under the provisions of the rule as waiting time for that period.

AWARD

Claim of employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of September, 1944.