

Award No. 1048
Docket No. 995
2-St.LSW-CM-'45

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY CO. OF TEXAS
(Berryman Henwood, Trustee)

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreement, Rule 7-5, wrecking crew of Texarkana, Texas, namely: J. W. Bruce, H. W. Wright, James Baxter, F. J. Klement, O. M. Lolley, J. A. Clark and H. H. Golden, be compensated at the rate of time and one-half from 8:00 P. M., May 23, 1943 to 5:00 A. M., May 24, 1943 while waiting for a train to move them to Texarkana after completing their assignment at the wreck at Camden, Arkansas.

EMPLOYES' STATEMENT OF FACTS: On May 19, 1943, the Texarkana wrecking crew was called at 10:45 P. M. to pick up wreck at Mile Post 324, Camden, Arkansas, leaving at 12:20 that night, and arriving at wreck at 4:30 A. M., May 20, 1943. This assignment was completed at 7:00 P. M., May 23, 1943, at which time wrecker and crew were moved to Camden, Arkansas, and tied up at 8:00 P. M., where they waited until 5:00 A. M., May 24, 1943 on a train to move them back to Texarkana. Train Extra 800 picked them up at that time and moved them back to Texarkana, where they tied up at 10:15 A. M., May 24, 1943.

POSITION OF EMPLOYES: It is the contention of the employees that the wrecking crew from Texarkana, Texas should be compensated at the rate of time and one-half for the nine hours between 8:00 P. M., Sunday, May 23, 1943 and 5:00 A. M., Monday, while waiting for train to move them back to Texarkana after completing their assignment at the wreck at Camden, Arkansas. We are basing our claim upon Rule 7-5 of the current agreement, which reads:

"7-5. Wrecking service employees will be paid under this rule, except that all time working, waiting or traveling on Sundays and Holidays will be paid for at rate of time and one-half, and all time working, waiting or traveling on week days after the recognized straight-time hours at home station will also be paid for at rate of time and one-half."

The carrier in refusing to grant the claim of the employees is placing the basis of its decision on Rule 7-2, which reads as follows:

"7-2. If during the time on road a man is relieved from duty for five (5) hours or more, such relief time will not be paid for provided that in no case shall he be paid for less than the eight (8) hours constituting his regular assignment at the home station (when such irregular service prevents the employee from making his regular daily hours at home station) and in addition thereto for the actual time

The employees' contention that the relief period cannot be given during the time an employe is waiting to return to his home terminal, is in effect a request for a new rule. The rule has always been applied on these lines in the same manner it was applied in this case.

It is fair and equitable in every manner. The men involved in this case were in bed sleeping during the period covered by the claim. They would have received no more compensation than they now claim had they been working under the most adverse conditions during the same period. The requirement in the rule that men be paid during their regular working hours, regardless of whether working or not, is sufficient to insure wrecking crews being returned to their home station promptly after completion of their work. No doubt the employees gave full consideration to these facts when they accepted the present rule in lieu of the former rule with its more restrictive provisions but lesser rate of pay. In other words they evidently felt that the increased compensation would more than offset any occasional disadvantage that might result from removal of the restrictions regarding relief from duty.

The rule as negotiated does not sustain the employees' claim. The carrier, therefore, respectfully requests that the claim be 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 waived right of appearance at 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 8:00 P. M., until 5:00 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 employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 17th day of January, 1945.