

Award No. 1362

Docket No. 1283

2-MP-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT A. F. OF L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That the current agreement was violated when remaining members of the wrecking crew were not called to accompany the wrecking outfit and Derrick Engineer D. Berry from Poplar Bluff to Paragould on March 11, 1948.

2—That accordingly the Carrier be ordered to additionally compensate wrecking crew members—

(a) C. Colcher, Charles Rainwater and Tom White, Carmen, and

(b) C. W. Derrington and Cecil Berry, Carmen Helpers—
for the same amount of hours at straight time and overtime rates as Derrick Engineer D. Berry was compensated from 1:30 A.M. to 8:00 A.M. on the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a force of carmen, a wrecking outfit and a regularly assigned wrecking crew at Poplar Bluff, Missouri. The regularly assigned wrecking crew consists of:

D. Berry	Wrecker Engineer
C. Colcher	Carman
Chas. Rainwater	"
Tom White	"
C. W. Derrington	Car Helper
Cecil Berry	" "

and are hereinafter referred to as the claimants, exclusive of the wrecker engineer, D. Berry. The regular assigned hours of the wrecking crew are from 8:00 A.M. to 12:00 noon and 12:30 P.M. to 4:30 P.M. with 30 minutes for lunch.

Carrier, on March 13, 1948, ordered the wrecking outfit and the regularly assigned wrecker engineer, D. Berry, for 1:30 A.M. At 2:30 A.M. wrecker outfit accompanied by Wrecker Engineer Berry, left Poplar Bluff, arriving at Paragould at 7:15 A.M. Subsequent to arrival, members of Paragould wrecking crew were ordered to man the outfit and clear the derailment. Upon completion of work at or about noon, Poplar Bluff wrecking outfit, along with Derrick Engineer Berry, left for home, arriving at Poplar

1269 quoted on Page 6 of this submission follow the policy here so clearly enunciated.

The conclusion to be drawn from all of the awards quoted and cited above, and there are many more so holding, is that the penalty for the violation of the provisions of these involved agreements is compensation at the pro rata rate of the position occupied by the claimant, and that the time and one-half rate will not be assessed against the carrier for work not performed, in the absence of a clear rule providing for such a penalty. Rule 7 (a), (b), (c) (d) and (e) is not such a rule that provides for compensation for work not performed.

The employes' claim for compensation at the overtime rate of time and one-half should 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 were given due notice of hearing thereon.

Carrier admits it violated the rules of the parties' agreement when on March 11, 1948, it sent its wrecker from Poplar Bluff to Paragould in charge of Wrecker Engineer J. D. Berry without having the balance of the crew, claimants here, accompany it. The only question involved is the rate of pay at which the claim should be allowed. The claim is made for pay on the same basis as carrier paid the engineer who accompanied the wrecker. It covers the hours between 1:30 A. M. and 8:00 A. M. For this period the record shows the engineer was paid for one hour at straight time and 5.8 hours at time and one-half. The straight time was for the period from 1:30 A. M. to 2:30 A. M. while the engineer was getting ready to depart. This was in accordance with Rule 7, (d) and (e), of the parties' agreement.

The regular assignment of the crew was from 8:00 A. M. to 4:30 P. M. with 30 minutes for lunch. No claim is made after 8:00 A. M. of the day here involved as apparently the crew worked during the hours of their regular assignment.

The penalty rate for the work here lost, because it was improperly given to others not entitled to it under the agreement, is the rate which the employes to whom it was expressly assigned would have received if they had performed the work. That is, the rate is the same as the carrier would have had to pay these employes, who were expressly assigned thereto, if, in the first instance, they had performed it. In this case that is the same basis on which it paid Engineer Berry.

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 January, 1950.