

Award No. 1461
Docket No. 1391
2-GC&SF-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the regularly assigned members of the Temple, Texas Wrecking Crew were entitled to be paid for traveling and waiting, June 18, 1950.

2. That accordingly the carrier be ordered to additionally compensate the claimants each in the amount of four (4) hours at their applicable overtime rate of pay.

EMPLOYES' STATEMENT OF FACTS: At Temple, Texas, the carrier maintains a wrecking outfit and a regularly assigned wrecking crew composed of Carmen O. Moreland, E. A. Cowan, J. Marinik and O. I. Worley, with home point (Temple, Texas) bulletined and regularly assigned hours on the rip track as follows: 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., work week Monday through Friday.

J. C. McQueen with home-point bulletined and regularly assigned hours 7:00 A. M. to 3:00 P. M., train yard inspector, work week Thursday through Monday.

Carman C. T. Stewart with home-point bulletined and regularly assigned hours 7:00 A. M. to 3:00 P. M., train yard inspector, work week Tuesday through Saturday.

Carman Helper C. D. Reat with home-point bulletined and regularly assigned hours 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M. on the rip track, work week Tuesday through Saturday.

On June 17, 1950, at 11:30 A. M. the above members of the Temple, Texas wrecking crew were called to accompany the wrecking outfit to Lawn, Texas, specifically mile post 409, to clear the main line, pick up, and reraill thirty or more cars. The wrecking outfit and regularly assigned wrecking crew departed from Temple at 12:50 P. M. June 17, 1950, arriving at Lawn, Texas at 8:30 P. M. June 17, 1950, and immediately started clearing the main line. They worked continuously from 8:30 P. M. June 17 until 1:30 A. M. June 18, (5 hours) at which time the wrecking outfit and crew were moved to Goldsboro, Texas, placed on the siding while trains passed, and returned to Lawn, Texas, at 5:30 A. M. June 18, 1950, resuming wrecking service work at 7:00 A. M. June 18, 1950.

"(b) If during the time on the road an employe is relieved from duty and permitted to go to bed for five (5) hours or more (after starting work at the point to which sent and prior to completion of work) such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by the railroad, actual necessary expenses will be allowed."

Every requirement of this rule was met, in that

- (1) The employes were on the road,
- (2) they were relieved from duty
- (3) and permitted to go to bed
- (4) for more than five hours,
- (5) after starting work at Lawn and prior to its completion, and
- (6) they were paid not less than 8' for each calendar day.

In these circumstances, the rule unequivocally provides that such relief time will not be paid for. Moreover, this was a bonafide relief from duty of 5' and 40" after the crew had been traveling to scene of accident and working thereat after being under pay approximately 14 hours continuously.

The employes are seeking a wholly unjustified interpretation of the governing rule—an interpretation that is not supported by the agreement or any reasonable implication therein, as the employes had not completed the work of picking up the wreck and did not actually do so until 4 days later, or at 5:15 P.M. June 22, 1950, and accordingly were paid as traveling from that hour until return to home terminal at 9:20 A.M., June 23. The carrier 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 were given due notice of hearing thereon.

On June 17, 1950, at 10:55 A.M., while freight train Extra 130 was passing Lawn, Texas, 14 cars were derailed and overturned, completely blocking the main line and damaging the switches to the passing track beyond use. The wrecker and crew at Temple, Texas, 191 miles distant, were called out. They arrived at the scene of the wreck at 8:30 P.M. At 1:20 A.M., June 18th, the main line was cleared and the crew was released. The crew went to bed in the bunk cars of the wrecking outfit. The bunk cars were moved to Goldsboro, a distance of 6.2 miles, where they remained on a siding until 4:30 A.M., when they were moved back to Lawn and placed on the passing track at that point, the passing track switch having been repaired in the interim. The record shows that the movement of the bunk cars to Goldsboro was necessary to permit trains to pass through Lawn, a situation brought about because of the damaged switches to the

passing track and the crowded condition of the house track. Carrier contends that it was purely a switching movement made necessary by the emergent conditions resulting from the wreck. It is the contention of the organization that it was traveling and waiting time within the meaning of Rule 9 (e), providing:

"Wrecking service will be paid for under this rule except that all time paid for working, waiting or traveling on their assigned rest days and designated holidays, and other days after the recognized straight-time hours at home station, will be paid for at rate of time and one-half."

The carrier contends that the controlling agreement provision is contained in Rule 9 (b) which provides:

"If during the time on the road an employe is relieved from duty and permitted to go to bed for (5) hours or more (after starting work at the point to which sent and prior to completion of work), such relief time will not be paid for . . ."

The record shows that claimants were released for rest from 1:20 A. M. to 7:00 A. M., a period of five hours and forty minutes. That they occupied the bunk cars during this period is not disputed by the record. The traveling time covered by Rule 9 (e) is that period of time occupied in going to the scene of the wreck from employees' home station and the period of time used in returning to home station from the scene of the wreck upon the completion of the work. The mere fact that conditions required that the bunk cars be moved while occupied by claimants during a rest period does not bring them within Rule 9 (e). The facts meet all the requirements of Rule 9 (b). The five hours and forty minutes here involved is a relief period within the purview of Rule 9 (b) and for which compensation does not accrue under the plain provisions of that rule. The interpretation sought by the claimants is a strained one that is not within the contemplation of the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1951.