

Award No. 2786
Docket No. 2523
2-AT&SF-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Western Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carmen W. J. Trantham, P. W. Bush, G. L. Redgate and V. D. Hinderliter, regularly assigned wrecking crew members, were improperly compensated in connection with rerailment of nine (9) cars at Tangier, Oklahoma, on March 16, 1956.

2. That accordingly the Carrier be ordered to additionally compensate these employees at the pro rata rate of pay between the hours of 8:30 A. M. to 1:30 P. M on the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Carmen W. J. Trantham, P. W. Bush, G. L. Redgate and V. D. Hinderliter, hereinafter referred to as the claimants, are regularly employed as carmen by The Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, at Waynoka, Oklahoma. The claimants are bulletined and assigned the working hours of 7:00 A.M. to 12:00 Noon, and 1:00 P.M. to 4:00 P.M., Monday through Friday, with rest days of Saturday and Sunday. In addition thereto the claimants are bulletined as members of the regularly assigned wrecking crew.

On March 15, 1956, the Waynoka wrecker and crew was called and went on duty at 5:05 P. M. and worked continuously until 1:20 A. M., March 16, 1956, when the main line was cleared. The wrecker crew was tied up for rest at 1:20 A. M. and did not resume duty until 1:30 P. M., March 16, 1956.

The wrecking crew was on continuous duty from 1:30 P. M., March 16, 1956, until 11:00 P. M. the same date.

changed to "Rule 7" effective with the revision of January 1, 1929 and was again changed to "Rule 9" in the current agreement effective August 1, 1945.

The above stipulations that an employe performing emergency road service must be relieved "* * * during the period outside of his regular assignment, for five (5) hours or more, rest period (not waiting), * * *" (emphasis added) were removed from the agreement by the parties effective August 1, 1945 and during the more than eleven years that have since elapsed, this is the first instance of record that the employes have contended that employes cannot be relieved at any time conditions permit. The guarantee of the rule is in the language:

"In no case shall an employe be paid for a total of less than eight hours each calendar day."

Obviously the claim is entirely without support of the agreement and should be denied.

In conclusion, carrier asserts that the requirements of Rule 9 were complied with in that—

1. The claimants were called as nearly as possible one hour in advance before leaving for the derailment at Tangier, Oklahoma—Paragraph (c).

2. The claimants were allowed one hour preparatory time at straight-time rates account leaving home station during overtime hours—Paragraph (d).

3. The claimants were allowed time and one-half for all time waiting and traveling to and from the derailment at Tangier, Oklahoma—Paragraphs (a) and (e).

4. The claimants were allowed straight-time, time and one-half and double time for all time worked at the derailment—Paragraphs (a), (e) and (f).

5. The claimants were relieved for rest after starting work and prior to completion of work at the derailment for five (5) hours or more, such time not being paid for and the claimants were paid for more than eight (8) hours each calendar day while away from home station, also meals and lodging were provided—Paragraph (b).

Carrier asserts that the employes' claim in this dispute is entirely without support of the agreement and should be denied in its entirety.

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 claim challenges the interpretation and application of Rule 9(b) made by the carrier in a situation wherein the claimants, who are members of

the wrecking crew, were called and worked from 5:05 P.M., March 15, 1956 until 1:20 A.M. March 16. At that time they were tied up for rest until 1:30 P.M. that same day (12 hrs., 10 min.). They then went on duty again and were relieved at 11:00 P.M., same date.

Rule 9(a) in part reads as follows:

"An employe * * * called for emergency road work * * * will be paid from the time ordered to leave home station until his return for all time worked * * * except * * *."

The exception of Rule 9(b) in part reads as follows:

"If * * * an employe is * * * permitted to go to bed for five (5) hours or more * * * 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 * * *."

The obvious meaning of the phrase "or more," emphasized in the quoted rule, demands a denial of this claim. The carrier granted "more" than five (5) hours; the men were paid for the calendar day, not less than eight (8) hours. There is no showing of any rule violation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2786

The majority attempts to justify a denial award by holding that the obvious meaning of the phrase "or more" in Rule 9 demands a denial of the claim. The fact is that the provision in Rule 9 for a relief period was incorporated for the purpose of providing a rest period for men on assignments whereby proper rest could be secured to fit them for the continuation of the tasks to which they are assigned. "Permitting" the instant employes to go to bed from 1:20 a.m. to 1:30 p.m. (12 hours and ten minutes) on March 16, 1956 is not a relief period within the purview of Rule 9. It is an obvious evasion of the rule as the record shows that during part of the time when the claimants were supposedly on relief time they were actually waiting, through no fault of their own, to complete the wrecking service.

We are constrained to dissent from the findings and award of the majority as it is manifestly unfair and in violation of the agreement not to allow the employes payment for time consumed in waiting.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink