Award No. 2895
Docket No. 2463
2-B&M-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT, AFL (Carmen)

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman Dow was improperly compensated during the period 7:00 A.M., November 13, 1954, to 12:05 A.M., November 15, 1954.

2. That accordingly the Carrier be ordered to compensate the aforesaid Carman the difference between what he was paid for the aforesaid period and what he was entitled to be paid which was double time from 7:00 A.M., November 13, 1954, to 12:05 A.M., November 15, 1954.

EMPLOYES' STATEMENT OF FACTS: Carman R. G. Dow, hereinafter referred to as the claimant, is employed at White River Junction on the 7:00 A.M. to 3:00 P.M. shift from Friday through Tuesday, with rest days of Wednesday and Thursday. In addition, the claimant is wreck crane engineer on the White River Junction wrecking outfit. At 11:00 A.M., November 12, 1954, the claimant was called to go with the White River Junction wreck crane and idler to Nashua, New Hampshire to assist in clearing up the derailment of passenger train No. 352. The balance of the wrecking outfit followed later.

On November 13, 1954, the claimant was relieved from service by Wreck Crane Engineer A. A. Cartier of the Concord wreck outfit from 7:00 A.M. to 6:30 P.M. at Nashua, New Hampshire.

The date, day, period worked, hours worked and rate paid Mr. Dow are as follows:

Date	Day	Period Worked	Hours Paid	Rate
11/12	Fri	7 A.M. to 3 P.M.	8 hr. 0 m.	Straight time
		3 P.M. to 11 P.M.	8 hr. 0 m.	Time and one-half
		11 P.M. to 7: A.M. 11/13	8 hr. 0 m.	Double time

FURTHERMORE, EVEN THOUGH THE RULE PERMITS THE CARRIER TO RELIEVE A MAN ANY TIME THE CARRIER WAS WILLING TO FIX A SPECIFIC MAXIMUM NUMBER OF HOURS THAT A MAN COULD WORK, IN FACT—THE CONSUMMATION OF A REASONABLE MEMORANDUM OF AGREEMENT TO SETTLE THIS DISPUTE WAS ABOUT TO BE AGREED UPON BY THE GENERAL CHAIRMAN UNDER DATE OF JANUARY 25, 1956, BUT WAS STOPPED BY THE PETITIONER FOR SOME UNKNOWN REASON.

The carrier reserves the right to present copy of this proposed memorandum of agreement as an exhibit in any future handling of this dispute.

CONCLUSION

The carrier has proven in the foregoing that:

1. The petitioner's interpretation of the subject rule is totally erroneous and is only being interpreted as such for the purpose of gaining collateral advantages.

2. The carrier has conclusively proven to your Honorable Board, its good faith herein and by the various exhibits, which suggest that a memorandum of agreement be consummated to settle the dispute, but the petitioner refused same.

In view of the foregoing, the claim is without merit and should be dismissed and/or 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.

The claim of the employe in this dispute deals with the interpretation and application of Rule 7 of the said Agreement effective April 1, 1937 as amended.

The pertinent sections of said Rule read as follows:

"An employee regularly assigned to work at shop, enginehouse, repair track or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection point, will be paid from the time he reports at his home station until he returns thereto, for all service performed as follows:

"1. For service during the employee's regular bulletined hours—pro rata rate."

"2. For service in excess of eight (8) hours, in any twenty-four (24) hour period, computed from the starting

time of the employee's regular shift up to eight (8) hours of such service, at time and one-half rate on the actual minute basis with a minimum of one hour."

"3. For service in excess of sixteen (16) hours of service in any twenty-four (24) hour period, computed from the starting time of the employee's regular shift, at double time rate, on actual minute basis."

"4. An employee who has performed more than sixteen (16) hours of service in any twenty-four (24) hour period, computed from the starting time of the employee's regular shift, and if required to continue in service after the expiration of said twenty-four hour period will be paid at the double time rate. An employee who has been released for five (5) hours or more as per paragraph 6 of this rule in the overtime period will terminate the double time payment at the beginning of the next twenty-four (24) hour period."

"6. If, during the time an employee is in the service under this rule, he is relieved from service and permitted to go to bed for a period of five (5) consecutive hours, or more, such employee will not be paid for the period of relief. This relief period, except in the case of employees assigned to wrecking service, may be prior to, subsequent to, or during the period of actual work."

"10. Wrecking service employees will be paid under this rule."

The claimant contended that under said Rule 7 there was no provision for relieving a regularly assigned member of the wrecking crew from service without compensating him, and that said Rule 7 was not ambiguous. It was the claimant's view that the current Agreement provided for a member of the wrecking crew to be paid continuously from the time the crew leaves the home point until the crew returns to its home point, and that therefore it was immaterial as to whether the member of the wrecking crew was working, waiting, traveling or sleeping.

The Carrier contended that said Rule 7 was written for the express purpose of avoiding laying off a member of a wrecking crew while away from the headquarters point, which would have necessitated that he travel back to his home point on his own time; and that therefore under the Rule, wrecking service employees could not be sent to rest before working hours or after working hours, but that it would be permissive to cut them off during their tour of duty for a period of 5 hours or more without pay, provided they are brought back to work; that Rule 7 is ambiguous and that the intent of the parties at the time the Rule was written must be applied.

Where a contract is ambiguous, oral evidence will be accepted to determine the intent of the parties. Where the contract is not ambiguous, outside evidence will not be accepted, but the contract will be determined on the basis of what it says.

Said Rule 7 is ambiguous and its meaning must be determined.

Rule 7 states that an employe such as the claimant who is regularly assigned to work at the Shop when called for emergency road work away

from such Shop will be paid from the time he reports at his home station until he returns thereto for all services performed as set out in said Rule 7 and that if during the time he is in the emergency road service he is relieved from such service and permitted to go to bed for a period of 5 or more consecutive hours, he will not be paid for the said period of relief. This relief period, the Rule goes on to state, may be prior to, subsequent to, or during the period of actual work except in the case of employes assiigned to wrecking service.

Wrecking service is emergency road work. In the first sentence of Section 6 of Rule 7 it is clearly stated that when an employe in emergency road service is relieved from service and permitted to go to bed for a period of 5 or more hours, he will not be paid for the period of relief. In the second sentence of Section 6 of Rule 7 it is set forth that the relief period may be prior to, subsequent to, or during the period of actual work except in the case of employes assigned to wrecking service (emergency service). The said second sentence created an ambiguity in said Rule 7. The intent of the parties in drafting the said second sentence must be ascertained and a determination of its meaning must be made consistent with the intent of the parties and the entire Rule 7.

The Carrier introduced a statement dated March 6, 1957, and signed by Richard W. Hall, Chief of Personnel (Retired) which reads as follows:

"Boston, Mass., March 6, 1957

"As I was the officer who negotiated the current Agreement for the Railroad, I will make the following statement with reference to Paragraph 6 of Rule 7:

"The present wording of the rule involved was due to the fact that prior to these negotiations, the Adjustment Board had interpreted the prior rule to mean that a man could only be relieved from work when away from home terminal during the progress of the work.

"In order to overcome this the Carrier suggested, during negotiations, that the words 'prior to, subsequent to, or during the period of actual work' be added to the rule. This was agreed to by all members of the Shop Crafts Committee, except the Carmen, who raised the objection that the rule **might** be interpreted to mean that a wreck crew could be relieved from work after the wreck was cleared and sent home without being paid for it. This was not the intent of the negotiators, but in order to protect the Carmen to their satisfaction, the words 'except in the case of employees assigned to wrecking service' were included in the rule.

"This was the wording suggested by the Mediator, who illustrated his point by specific examples to the effect that the men would have to be paid on the way to and from the wreck, **but would not have to be paid if they were released for five hours or more during the period of actual work.**

"Another objection raised by the Carmen in negotiation was that there might be no place to go to bed within a radius of many miles and that also was in the minds of the parties when they executed the last sentence of the rule.

/s/ Richard W. Hall
Chief of Personnel (Retired)"

From the record as presented and Rule 7, the Board interprets Section 6 of said Rule 7 to mean that an employee while in the service of emergency road work (such as wrecking service) may be relieved from service and permitted to go to bed for a period of 5 or more consecutive hours for which he will not be paid; that said relief period may be, in the case of a wrecking service employee, during the period of actual work and not prior to or subsequent to the wrecking service being performed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2895

The majority in their findings ignore that part of Rule 7, Section 6, reading

> ". . . This relief period, except in the case of employees assigned to wrecking service, may be prior to, subsequent to, or during the period of actual work."

There is no ambiguity in this sentence as the relief period referred to clearly excepts employes assigned to wrecking service. When the language of a rule is clear as in the instant case it should be enforced as made. The instant language is so clear as to be beyond interpretation. The present claim should have been sustained and the employes compensated as claimed.

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