

Award No. 3800

Docket No. 3250

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr. when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1 — That J. C. Wallace, Carman, Van Buren, Arkansas, was released from duty during his regular assigned hours and was not compensated eight hours from 11 P. M. to 7 A. M. on March 11, 1957, and 2½ hours from 11 P. M. until 1:30 A. M., March 12, 1957.

2 — That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman J. C. Wallace at the straight time rate for his regular assigned 8 hour shift on March 11, and 2½ hours at the straight time rate for March 12, 1957.

EMPLOYEES' STATEMENT OF FACTS: At Van Buren, Arkansas, the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a wrecking derrick and regularly assigned wrecking crew. On March 11, 1957, Carman J. C. Wallace, regularly assigned wrecking engineer, hereinafter referred to as the claimant, was called for 8:30 A. M., to messenger the wrecker derrick to Jefferson City, Missouri. The derrick departed Van Buren at 9:30 A. M., and arrived at Coffeyville, Kansas at 11:00 P. M. The claimant was released from duty until 7:00 A. M. the next morning, March 12, 1957, and departed Coffeyville at 8:30 A. M., arriving at Durand, Kansas at 5:00 P. M., same date (March 12), where he was relieved and again called at 1:30 A. M. on March 13 and departed Durand, Kansas at 3:30 A. M., March 13, arriving at Jefferson City, Missouri, his destination, at 3:00 P. M., same date, March 13, 1957.

On his return trip, the claimant left Jefferson City at 5:30 P. M. on train #15, arriving at Kansas City, Missouri at 9:00 P. M., on March 13 and was required to wait until 8:30 A. M., March 14, at which time he caught train #125 and arrived at his home point, Van Buren, Arkansas, at 7:00 P. M., same date, March 14, 1957.

The only portion of payment in dispute are the hours that the claimant was regularly assigned at home station — 11:00 P. M. to 7:00 A. M., March 11 and 12. The original claim was for 8 hours pay for each of these dates; however, on the first payroll of November, 1957, the carrier additionally com-

one-half rate for March 11, and 9 hours at the time and one-half rate for March 12. Claimant was paid for more than 8 hours on each date constituting his regular assignment at the home station.

It seems perfectly clear that the compensation allowed claimant is strictly in accordance with Rule 7. Rule 7 is a special rule applicable to road service and takes precedence over general pay rules. Note that the rule guarantees the employes at least as much compensation as they would have received during their regularly assigned hours at home station, and, in addition, provides for compensation at the punitive rate under certain circumstances which ordinarily produces greater compensation for the employe than he would have received if he had remained at his home station. The rule also provides that the employe will be paid necessary expenses for meals and lodging which were, of course, allowed in this case. Claimant is not entitled to any further compensation.

This issue has previously been decided by this Board in Award 2374 of this Division which involves a dispute between the same parties as those now before your Board. The facts in that case were that a carman at Popular Bluff similarly assigned to the third shift, or 11:00 P. M. to 7:00 A. M., was used in wrecking service at Okean, Arkansas. The wrecking crew worked during the daytime for a number of days and rested during the night including a part of the regularly assigned work hours of the third shift carman. The crew was tied up for more than 5 hours at night and the third shift carman was not paid for the time spent sleeping, even though some of that time was during his regularly assigned hours at his home station.

The Board considered the issue and came to the following conclusion:

"It seems clear to us that claimant is not entitled to pay when he is relieved from duty for five hours or more when the conditions of Rule 7(b) have been met. His claim for compensation during relief periods in excess of five hours is without basis in the rules."

A part of the claim in that dispute was sustained, but the award reads:

"The claim is sustained for Findings."

so that the above quoted paragraph of the findings stands as the conclusion of this Division.

The issue in this dispute is the same as the issue in Award 2374 described above. We can see no alternative to your Board following its practice of conforming to this sound and convincing precedent.

Certainly there is no merit to a claim for pay for an employe during the time he is sleeping, particularly when he is paid a full day's wages for each day involved. The claim is clearly not supported by the agreement. It follows that the claim 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant was a regularly assigned carman at Van Buren, Arkansas, during March, 1957. His normal tour of duty in that assignment was 11 P. M. - 7 A. M., Fridays through Tuesdays, with Wednesdays and Thursdays as rest days.

On Monday, March 11, 1957 claimant was called at 8:30 A. M., and departed Van Buren at 9:15 A. M., on a local freight train accompanying a wrecker derrick which was being transferred to Jefferson City, Missouri. The claimant tied up at Coffeyville, Kansas at 11 P. M., March 11, and was allowed one hour at straight time pursuant to Rule 7(d) of the applicable agreement and 14' 30" at time and one-half for service performed outside of his regularly assigned hours at home station as compensation for March 11. He spent the night at Coffeyville, was called at 8 A. M., Tuesday, March 12, departed 8:30 A. M. and tied up at Durand, Kansas at 5 P. M., and was paid 9 hours at time and one-half rate for service performed March 12. On Wednesday, March 13, he was called at Durand at 1:30 A. M., departed at 3:30 A. M., and arrived at Jefferson City, Missouri at 3 P. M. that day. For March 13 claimant was paid 5½ hours at straight time rate from 1:30 A. M. to 7 A. M. (which period was within his regularly assigned hours at home station), and 14 hours at time and one-half rate for the period from 7 A. M. to 9 P. M., which was time outside his regularly assigned hours at home station. He had left Jefferson City at 5 P. M. on March 13 by passenger train enroute to his home station, and tied up at Kansas City at 9 P. M. On Thursday, March 14, he completed his return trip to Van Buren, Arkansas and was paid at time and one-half for time spent traveling on his rest day.

This claim involves the time from 11 P. M., Monday, March 11, to 7 A. M., Tuesday, March 12, and from 11 P. M. Tuesday, March 12, to 1:30 A. M., March 13. Those hours are within claimant's regularly assigned hours at Van Buren, Arkansas. They are also within the time periods during which claimant was tied up at Coffeyville and Durand, Kansas on his journey to Jefferson City, Missouri.

The employes maintain that carrier's refusal to pay claimant 8 hours straight time from 11 P. M., March 11, to 7 A. M., March 12, and for 2½ hours straight time from 11 P. M., March 12, to 1:30 A. M., March 13, violated Rules 7(a), 7(b) and 8(a) of the effective agreement. These rules provide:

"7(a) An employe regularly assigned to work at a shop, engine house, repair track or inspection point when called for emergency road work away from such shop, engine house, repair track or inspection point will be paid from the time ordered to leave home station for all time worked in accordance with the practice at home station and straight time rate for all time waiting or traveling, except on their rest days and holidays time and one-half will be paid for all time worked, waiting or traveling, except as may be otherwise specified in this agreement. The rules of this agreement will not be so applied as to require payment in excess of time and one-half for time waiting and traveling.

"7(b) 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 pro-

vided 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 employe from making his regular daily hours at home station) and in addition thereto for the actual time working or traveling before or after his regular assigned hours at the home station. Where meals and lodging are not provided by the company, actual necessary expenses will be allowed.

"8(a) When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the time."

In construing Rule 7, as in the case of an agreement as a whole, all of its sections must be read so as to give each of them full force and effect, if it is possible to do so. In applying this universal rule of construction, it is found that Rule 7(b) contains a limitation on the claimed sweep of Rule 7(a) if the employe on road duty away from his home station is relieved from duty for five hours or more. In such circumstances the contracting parties have specifically provided that such relief time will not be paid for.

In the instant case claimant was relieved from duty for 9 hours on March 11-12, after having been allowed 1 hour at straight time and 14½ hours at overtime for service performed on the calendar day March 11. Likewise he was relieved from duty for 8½ hours on March 12-13 after having been allowed 9 hours at time and one-half for service performed on the calendar day March 12. In each instance claimant was paid more than he would have received on his regular assignment at his home station and in each instance he was relieved from duty for more than 5 hours. Rule 7(b) governs the situation presented in this docket and it is clear from the record that the conditions stated in that rule were fully met. The facts and circumstances shown of record warrant the conclusion that the hours the claimant was relieved from duty were to afford him rest and were not designed to equalize overtime as contemplated by Rule 8(a). The claimant was correctly paid under the applicable rules.

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 June 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3800

We disagree with the majority's finding that the facts and circumstances shown of record warrant the conclusion that the hours the claimant was relieved from duty were to afford him rest and were not designed to equalize overtime as contemplated by Rule 8(a). On the contrary the record discloses that the claimant was relieved from duty during his regular working hours

through no fault of his own but for the benefit of the carrier, thus it could only have been done for the purpose of equalizing overtime. The claimant was incorrectly paid under the applicable agreement rules.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink