Award No. 3831
Docket No. 3651
2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Missouri Pacific Railroad Company improperly compensated members of the North Little Rock, Arkansas wrecking crew when on road assignment October 19th, 1958.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the North Little Rock, Arkansas wrecking crew, namely:

B. Antonacci	Carman
J. H. Ward	"
J. L. Marler	"
D. Taylor	"
L. C. Mitchell	"
G. W. Wiesman	"

five (5) hours at the overtime rate covering the time between 2:00 A. M., when they were relieved for rest, and 6:00 A. M. when they were again called for service on October 19th, 1958.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a wrecking derrick and regularly assigned wrecking crew at North Little Rock, Arkansas. The wrecking crew consists of a wrecking engineer, Mr. F. M. McMurray, and six (6) Carman, namely:

B. Antonacci
J. H. Ward
J. L. Marler
W. D. Taylor
L. C. Mitchell
G. W. Wiesman

hereinafter referred to as the claimants. The claimants regularly assigned hours at home station are 7:00 A. M. to 3:30 P. M., Monday through Friday, rest days Saturday and Sunday.

1958. The wrecking crew was at Muldrow for several days. The night before each claim date, the foreman told the crew that work would start at 6:00 A. M. and work did start at that time. On each date, the cook aroused the crew at 5:00 A. M. so that the men would be ready to start work at 6:00 A. M. A claim for one hour's pay for each member of the crew for each date was filed and appealed to the chief Personnel officer who declined the claim. The claim was not progressed to this Board within 9 months from that decision as specified in Article V of the agreement of August 21, 1954. Therefore, the claim is barred.

The Muldrow claim and the instant claim involve similar facts and are governed by the same rules. The abandonment of the Muldow claim necessitates the denial of the present claim under the provisions of Article V of the agreement of August 21, 1954. See Award 2177 of this Division. But, in addition, the filing of the claim is further proof of the practice under the rule of not compensating men in road service for time spent eating and dressing during periods when relieved from duty for 5 hours or more. The isolated claim furnishes proof of the fact that the carrier has not been compensating employes under such circumstances. The exception proves the rule. The employes are progressing this claim undoubetedly because the time relieved from duty happened to be exactly 5 hours. The line had to be drawn some place. The employes are trying to take advantage of unusual circumstances to collect an additional 5 hours pay at punitive rates to which they are not entitled.

The pay rules of the collective bargaining agreement specify the rate of pay the employe is to receive for work performed. Getting up, dressing and eating is not work and the time so spent is not compensable time under the general pay rules of the agreement. If an employe is to be paid for time so spent, there must be a special rule expressly so providing which runs contrary to the general rule. Rule 7 is a special rule applicable to road service and does provide for the payment of time spent other than working, that is, time spent waiting, traveling and so forth, taking into account the inconvenience caused the employe by taking him away from his home station. But paragraph (b) of that rule permits the basic principle to apply that employes are to be paid only for work performed when it provides that

> "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 . . ."

Since claimants were relieved from duty for the 5 hours for which claim is made, such time is not to be paid for.

It necessarily follows from the foregoing facts that the claim is not supported by the agreement and must 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.

The issue is whether employes who were engaged in the clearing of a wreck are entitled to compensation during a rest period starting at 2:00 A. M. and continuing to 7:00 A. M. in view of the fact that they were awakened at 6:00 A. M. for the purpose of readying themselves so as to commence work promptly at 7:00 A. M. where the rule provides that the carrier shall not be required to pay compensation if the man "is relieved from duty five (5) hours or more."

The above issue boils down to whether a man is "relieved from duty" while eating breakfast and while otherwise preparing to go to work following a rest period.

The employes urge that there was actual preparation work performed — that they were engaged in straightening lines and otherwise preparing to start work before 7:00. This is possible or even likely but the claimants were not ordered to start until 7:00 A. M. By contrast the cook and engineer were ordered to commence work before 7:00 A. M. in order that the others could start at that hour. Therefore the facts important to the decision are that the men were engaged in their personal pursuits and not in the carrier's work during this hour from 6:00 A. M. to 7:00 A. M. To be sure, it benefited the carrier as indeed it benefited the men, and the question is whether this is enough to require that it be compensated.

The controlling fact is that the men were not on duty until the work resumed. If it were shown that work orders were given or that actual control was exercised during this hour and that the 7:00 A. M. starting time was just a pretext there would be merit to the argument. In the absence of such a showing we must hold that while eating and otherwise preparing themselves the men are not on duty. In order for this type of activity to be compensable there would have to be a specific provision in the agreement.

Award 161 involved waiting time of three hours. Carrier contended that since claimant had been relieved from duty four hours before, there was total relief of 5 hours or more. It was held however that the time he would have been working at his home station did not count and sustained the claim. The factor of bulletined hours here made the difference.

In Second Division Award 360 time spent waiting for transportation was held not to constitute relief from duty. This waiting time was also specifically covered by Rule 7a and is therefore distinguishable from eating and personal preparation. Award 1971 is similar. It was there held that men waiting for a train connection to transport them back to home station were not relieved from duty. Rule 7(b) was held wholly inapplicable because the work did not in fact continue the second day.

In the instant case the time spent eating and for other personal preparation is not specifically covered and although it indirectly served purposes and interests of the carrier it is more reasonably a part of the rest period than the period of work and it would strain logic to conclude that the men were not relieved from duty.

The further contention of the claimants that "wrecking service employes" are classified separately in Rule 7(e) and that because of this they are not subject to Rule7(b) and are therefore on duty continuously is without merit. Wrecking Service employes are a part of the broader classification emergency road service.

We are constrained to deny the claims.

AWARD

Claims denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3831

If the claimants had been actually relieved from duty for five hours they would not have been called until after the expiration of the five hour period. The carrier excercised actual control over these employes when it called them at 6.00 A. M., one hour before the expiration of the five hour relief period.

The five hour provision was incorporated for the purpose of providing a minimum 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. Obviously, the time between 6:00 A. M. and 7:00 A. M. was not allowed by the carrier as a rest period and therefore could not be considered as relief from duty within the meaning of this provision of Rule 7.

Two members of the instant wrecking crew were properly compensated under Rule 7 for the period from 2:00 A. M. to 7:00 A. M. and the majority should have ordered the carrier to compensate the claimants in the same manner.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink