

Award No. 3842

Docket No. 3433

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 the Missouri Pacific Railroad Company did not compensate James Johnson, Wrecking Engineer and C. E. Rainwater, Carman, from 12:15 A. M. to 7:00 A. M., December 25th, 1957 in the amount of 6¾ hours, and from 11:00 P. M., December 25th to 7:00 A. M., December 26th, 1957 in the amount of 8 hours for their regular assigned hours at home station.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Wrecking Engineer Johnson and Carman Rainwater in the amount of 6¾ hours at the straight time rate for December 25th from 12:15 A. M. to 7:00 A. M. and 8 hours at the straight time rate from 11:00 P. M., December 25th to 7:00 A. M., December 26th, 1957.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a wrecking derrick and regularly assigned wrecking crew composed of the following employees:

James Johnson	— Wrecking Engineer
E. L. Tibbs	— Carman
C. E. Rainwater	— Carman
L. Hendricks	— Carman
L. L. Richardson	— Car Foreman
Tom White	— Helper
Ernest French	— Helper

at Poplar Bluff, Missouri, a distance of approximately 169 miles south of St. Louis, Missouri and about 80 miles north of Wynne, Arkansas, the point where the wreck occurred at 3:00 A. M., December 24, 1957.

arose. A similar situation existed in that dispute. A wreck had occurred at O'Kean, Arkansas and the wrecking crew was called and required to work for some 6 days. The crew worked during the daytime and was rested at night, some of which time was during the wrecking engineer's regularly assigned hours from 11:00 P. M. to 7:00 A. M. at Poplar Bluff. The carrier cited the same rule on which we are now relying and this Division in its findings accepted the argument of the carrier in the following words:

"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."

The foregoing language of the decision of this Division in Award No. 2374 is also explicit. Since the facts in that dispute are on all fours with the facts in the instant dispute there is no reason why the precedent established in that award should not be followed here. The interpretation placed on the rule by the carrier and by this Division is logical and reasonable. Claimants were fairly compensated for the work performed while in wrecking service. Claimants worked a good deal more than 8 hours each day. Compensation for work performed was mostly at the time and one-half rate and, therefore, exceeded their usual pay on their regular assignments. Claimants were sleeping during the period for which pay is requested. It is entirely unreasonable to expect pay while a man is sleeping.

For the foregoing reasons the carrier respectfully submits that the claim is entirely without support under the provisions of the agreement and is utterly devoid of merit, and, therefore, 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimants were car inspectors on the third shift with hours 11:00 P. M. to 7:00 A. M., but because of force reduction were assigned to the wrecker in order to provide a full crew.

They were used for wrecker service from 7:00 A. M. on December 24th to 7:30 P. M. on December 26th. During that time they were relieved from duty and were not paid for 6 $\frac{3}{4}$ hours of their regular third shift for December 24th (12:15 A. M. to 7:00 A. M. on December 25th) and also during their entire regular shift for December 25th (11:00 P. M. on December 25th to 7:00 A. M. on December 26th).

The claim is that they should be paid for those periods during which they were relieved.

Rule 7 applies to wrecker service. Section (a) provides that an employee who is regularly assigned to a point and who is called for wrecker service

elsewhere shall be paid for all time worked, waiting or travelling, from time ordered to leave home until his return, except as otherwise provided.

Section (b) provides:

"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 provided 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 travelling before or after his regular assigned hours at the home station * * *."

In other words, the rule that while on wrecker service he is to be paid for all time waiting as well as working or travelling is subject to the exception for relief periods of five hours or more.

But that provision is subject to the further proviso that when such irregular service prevents the employe from performing his regular daily hours at home station (which it did in this case for claimants' regular third shift assignments on both days), "in no case shall he be paid for less than the eight hours constituting his regular assignment", and in addition thereto for the actual time working or travelling (but not waiting) before and after his regular assigned hours at the home station.

On both days claimants were paid for the actual time worked and travelling before and after their regular third shift, and they were also paid for that part of their regular December 24th shift actually worked (until 12:15 A. M. on the 25th); but they were not paid for the remainder of that shift or for any part of their regular December 25th shift.

Not having been paid in accordance with Rule 7 the claim must be sustained. This is not to hold that claimants must be paid for resting, but that a rule adopted by the parties must be followed even if it has that end result. For this Board must apply the rules as it finds them.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November 1961.