

Award No. 3847

Docket No. 3541

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 controlling agreement, particularly Rule 7(e) was violated when the Missouri Pacific Railroad Company improperly compensated the North Little Rock Wrecking Engineer, Mr. R. D. Loy, on August 1, 1958, between the hours of 11:45 A. M. and 11:30 P. M.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Wrecking Engineer R. D. Loy for August 1, 1958 from 11:45 A. M. to 3:30 P. M. (3¾ hours) at the straight time rate, it being his regularly assigned hours at home station, and 8 hours at the overtime rate from 3:30 P. M. to 11:30 P. M.

EMPLOYEES' 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. Mr. R. D. Loy, hereinafter referred to as the claimant, is the regularly assigned wrecking engineer at North Little Rock and when he is not working in that capacity he is employed as a carman on the repair track in the North Little Rock Shops with regular assigned hours of 7:00 A. M. to 3:30 P. M.

After completing his regular assignment on July 31, 1958, at 3:30 P. M. the claimant was called at 5:00 P. M. to leave Little Rock at 6:00 P. M. to messenger Wrecker X-104 to Memphis, Tennessee. The claimant arrived at Bald Knob, Arkansas at 10:00 P. M., July 31, and was tied up until he was called at 4:30 A. M., August 1, 1958, at which time he proceeded to his destination of Memphis, Tennessee, arriving there at 11:45 A. M.

The claimant arrived at Memphis at 11:45 A. M., but had to wait until 8:30 P. M., August 1, to get a train back to his home point of Little Rock, arriving there at 11:30 P. M., same date.

shown above that the conditions of Rule 7(b) have been met in the instant dispute and that claimant was relieved from duty "in excess of five hours" during the period not paid for. Your Board's decision in Award 2374 clearly requires a denial of this dispute.

A similar dispute existed in Award 2786. The award interpreted Rule 9 of the agreement between the parties to that dispute which is, for all practical purposes, identical with the rule in the dispute here. Your Board clearly found that employees engaged in road work who are relieved from duty for 5 hours or more are not entitled to compensation for such relief time. For the convenience of your Board we have set forth the findings here:

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 * * * and 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.

The foregoing awards of this Division as well as the acceptance of the carrier's decision in the earlier dispute described above clearly require a denial of the instant claim.

The employees have relied on paragraph (e) of Rule 7 but the carrier has shown that wrecking service was not involved and, for that reason, paragraph (e) has no application to this dispute. It is only necessary for your Board to find that the rule relied upon by the employees does not support the claim in order to come to the conclusion that the claim must be denied. However, the carrier has gone beyond the burden of proof which may properly be imposed on it in this dispute and shown affirmatively that claimant was properly compensated under paragraphs (a) through (d) of Rule 7 with particular reference to the application of paragraph (b). The clear unambiguous provisions of those paragraphs require a denial of this claim.

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 regularly assigned as a carman at the repair tracks at North Little Rock on the first shift with hours 7:00 A. M. to 3:30 P. M.; he also held a regular assignment as wrecker engineer on the wrecking crew there. Being thus familiar with the handling of the locomotive crane he was used on July 31 to messenger it to Memphis, which did not constitute wrecker service.

At 11:45 A. M. on August 1st, 3¾ hours before the end of claimant's regular first shift period, the crane reached Memphis and his messenger's service was completed. He was immediately relieved from service for more than five hours while awaiting transportation home, which he received on a passenger train leaving Memphis at 8:30 P. M. and arriving at North Little Rock at 11:30 P. M.

Claimant was paid for August 1st at straight time rate until his relief from duty at 11:45 A. M., and also from 8:30 P. M. to 11:30 P. M. while travelling to his home station. The claim is for pay at straight time rate for the remaining 3¾ hours of claimant's regular first shift period on August 1st, and at the overtime rate for the entire eight hours between 3:30, the end of his regular shift, and his return home.

The claim for pay during the final 3¾ hours of his regular home shift involves the same circumstances as Award No. 3842 and, like it, is governed by Rule 7(b) which provides that an employe prevented by emergency road service from performing his regular shift at his home station shall in no case be paid for less than those eight hours in addition to the actual time working or travelling before or after his regular shift. Consequently that portion of the claim must be sustained.

The balance of the claim is for pay at overtime rate for the eight hours between 3:30, the expiration of his regular first shift, and his return home at 11:30. It is based upon the provisions of Rule 7(e) that wrecking service employes will be paid for all time waiting as well as working and travelling after their regular shift, and at time and one-half instead of straight time. However that part of the rule is not applicable under these conditions. Claimant had the status of wrecker engineer as well as carman. But certainly he is not a wrecking service employe for the obvious purpose of the rule except when acting as such. Consequently he is not entitled to the overtime rate for travelling, nor to pay during the relief period of five hours between 3:30 P. M. and 8:30 P. M. while he was neither working nor travelling, but was waiting for transportation home.

AWARD

Claim sustained in accordance with the above findings for pay at straight time rate for the final 3¾ hours of claimant's regular home station shift.

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.