

Award No. 4087

Docket No. 3854

2-IC-CM-'62

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. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. — C. I. O.
(CARMEN)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That under the controlling agreement, wrecking crew members R. D. Barron, R. L. Slay, Sylvester Cotten, W. W. Chisholm, A. L. Evans, P. J. McGehee, and E. F. Prescott, should have been paid waiting time from 9:00 P. M. July 15, 1959, until 6:00 A. M., July 16, 1959.

EMPLOYES' STATEMENT OF FACTS: Carmen R. D. Barron, R. L. Slay, Sylvester Cotten, W. W. Chisholm, A. L. Evans, P. J. McGehee, and E. F. Prescott, hereinafter referred to as the claimants, constitute the regular assigned wrecking crew of the Illinois Central Railroad, hereinafter referred to as the carrier, at McComb, Mississippi.

On July 11, 1959, the claimants were called out at 7:00 A. M. and worked picking up wreck at Byram until 11:00 P. M., then brought back to McComb to stay until Monday, July 13, 1959. The claimants returned to Byram and worked on this date from 4:00 A. M. until 10:00 P. M. and tied up for the night at Crystal Spring. On July 14, 1959, they worked from 5:00 A. M. until 9:00 P. M. and on July 15, 1959, they worked from 7:00 A. M. until 9:00 P. M. both days at Byram, Mississippi. At 9:00 P. M. the wrecking crew had finished picking up the wreck, cleaning up the cars, finished preparing cars for the homeward trip to McComb. All members of the crew had washed up, changed clothes, the fire in the derrick had been killed and the derrick had been tied down. However, instead of carrying the crew to their home point at McComb, Mississippi, they were carried to Elton, Mississippi, with all the hospital cars attached and tied up for the night to have daylight movement on July 16, 1959.

This dispute has been handled in accordance with the controlling agreement up to and including the highest designated officer of the carrier with

ette. But even if this could be construed as negligence on the part of the carrier, nevertheless, other considerations justify the layover at McDoel. It had taken three hours and fifty minutes to move the train from Orleans to McDoel, a distance of forty miles. At the same rate of progress, it would have taken almost nine hours to move from McDoel to Lafayette. We think the carrier was justified in not commencing the trip at 4:50 P. M. on June 22.

It is true that this train movement was made with a minimum of difficulties. It made the trip from McDoel to Lafayette in five hours and twenty minutes, a better time than was expected. But carrier was required to make its decision on the situation as it appeared before the trip was made, not on the facts as they subsequently proved to be. A carrier is required to look out for the safety of its property and its employees. An estimation of time for moving a train such as the one here involved cannot be made with accuracy. As long as there is a reasonable basis for the judgment exercised, no basis for a claim exists."

In the above case, the Board recognized the carrier's right to tie-up a wrecking crew overnight rather than commence the movement of a hospital train at 4:50 P. M., which movement, as it appeared, would have taken nine hours. Here, the wrecking crew worked from 7:00 A. M. to 9:00 P. M. on July 15—14 hours—and the claimants would have worked at least ten more hours after 9:00 P. M. had they not tied-up overnight—two hours preparing the hospital train for movement and eight hours taking the hospital train to the McComb shops. Applying the reasoning in Award 1635, the carrier here surely had the right under the provisions of Rule 12 to tie-up the crew at 9:00 P. M. on July 15 rather than attempt to complete the work of preparing the train for movement and then moving it that night.

The carrier reiterates that the McComb wrecking crew simply had not completed its wrecking work when it tied-up at 9:00 P. M. on July 15 as the crew was needed and used two hours (6:00 A. M. to 8:00 A. M.) the next morning to prepare damaged cars and equipment for movement, and eight hours (8:00 A. M. to 4:00 P. M.) to inspect and service the damaged cars and equipment enroute to the McComb shops. The released period—from 9:00 P. M. on July 15 to 6:00 A. M. on July 16—was surely a release from actual service for more than five hours, and the claimants were permitted to go to bed. They were, as we have shown, provided with comfortable sleeping accommodations, including double mattresses, blankets, and linen. They have no cause to complain because Rule 12 specifically provides that released periods of five or more hours to go to bed shall not be paid for, and this is the first such complaint, we might add, despite the fact that this and other wrecking crews on this property have been released in the past, without pay, under similar circumstances.

The claim is without merit and 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 waived right of appearance at hearing thereon.

The work at the scene of the wreck admittedly was completed on July 15th, before the claimants were released and given the opportunity to go to bed.

The Carrier's defense to the claim is that the claimants performed some wrecker service on the rerailed cars before and during the movement to McComb on July 16; however, these allegations are denied by the Organization and not proven by any evidence. Consequently, the claim must be sustained. See Awards 790, 1028, 1048 and 1078 of this Division.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1962.