

**Award No. 4115  
Docket No. 3877  
2-CB&Q-CM-'63**

**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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**CHICAGO, BURLINGTON & QUINCY  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement the Chicago, Burlington & Quincy Railroad Company improperly compensated members of their wreck crew when on road assignment, September 15 to 16, 1959.

2. That, accordingly the Chicago, Burlington & Quincy Railroad Company be ordered to compensate their Denver, Colorado wreck crew members, namely, David Engleman, John Garrier, John Comminiello and Jack Mauter for eleven hours each, at the time and one-half rate from 6:30 P.M. September 15, 1959 until 5:30 A.M., September 16, 1959.

**EMPLOYEES' STATEMENT OF FACTS:** The Chicago, Burlington & Quincy Railroad Company (hereinafter referred to as the carrier) maintains a regular assigned wreck crew and wrecker at Denver, Colorado. The above named employes were ordered out with the Colorado, Southern Railroad's wreck crew and wrecker (the Colorado-Southern Railroad is a subsidiary of the carrier) to clear up a wreck of one of the carrier's freight trains at Brush, Colorado. The above named employes were called at 10:00 A.M., September 9, 1959 to leave for Brush, Colorado. They finished their work at Brush of picking up the wrecked equipment and clearing the tracks at 1:00 P.M., September 15, 1959 and started their return to Denver. The train with the wrecker consisted of dining car, bunk cars, etc. At Roggen, Colorado, the wrecker and crew were ordered tied up from 6:30 P.M., September 15, 1959 until 5:30 A.M., September 16, 1959. The carrier officials have refused to compensate these employes for all time waiting at Roggen, Colorado, which is contrary to the agreement that is controlling and effective October 1, 1953.

**POSITION OF EMPLOYEES:** It is the contention of the employes that the hours between 6:30 P.M., September 15, 1959 and 5:30 A.M., September 16, 1959 comes within the purview of Rule 9(e) which is as follows:

It is apparent that former General Chairman Cottrill of the carmen's organization recognized the 1942 interpretative understanding, by withdrawing the claim of the McCook wrecking crew in 1958. Yet two years later, in 1960, the Brotherhood of Railway Carmen refuses to live up to the previous dispositions, and progresses the instant claim to the Second Division. Surely the Board will heed the understanding made by the parties in arriving at its decision.

In conclusion, the carrier reasserts the principal points of its defense to this completely unjustified claim which effectively bar a sustaining award:

1. Rule 9, paragraph (b) expressly allows deductions from pay for periods of relief, except when relief period is less than 5 hours or the employees are not permitted to go to bed. No other exceptions should be engrafted upon this rule by the Board.
2. The awards which have made another exception, are based on a situation where the road service was completed and the employees were required to wait for a train to bring them home. This was not the case here, for additional service remained to be performed during the trip from Roggen to Denver on September 16, 1959.
3. Awards 1429, 1557, 1635 and 1637 recognize that deductions in pay for rest periods can be made when the employees have more work to do after their rest is up.
4. In any event, the two claim settlements on this property constitute a binding commitment by the organization that these claims are not valid on this property.

For these reasons, the Board must find for the carrier and deny this claim in its entirety.

**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 employees 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.

Each of the denials of this claim on the property stated that the overnight tie-up at Roggen "took these men off the time of deadheading back to Denver." The carrier's contention here, on the contrary, is that their work was not completed, and that it was necessary for them to inspect and service the wrecked equipment on the way to Denver. That contention was denied and was not supported by the evidence. The only showing in the record of any inspection of damaged cars enroute was the statement of Wreck Master Monaco of the Colorado & Southern Railway Company that he and Colorado & Southern carman Dodaro, whose wrecking outfit was returning to Denver in this train on C. B. & Q. R.R. tracks "made such inspection as time would allow, each time the train stopped", which does not indicate that the stops were made for inspection purposes or that inspections enroute were made by this C. B. & Q. wrecking crew.

It has been held by this Division in prior awards that provisions like Rule 9(b) for relief from duty on the road relate to actual working periods and not to time waiting or traveling after the work has been completed. Awards 790, 1028, 1048, 1078 and 1971.

**AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of SECOND DIVISION

**ATTEST: Harry J. Sassaman**  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.