

Award No. 4184
Docket No. 4082
2-CRI&P-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, Carmen C. R. Evans, C. F. Ellis, V. N. Ryan, F. B. Conner, E. E. Long, Paul Krainovich, L. M. Bowers and J. R. Comer were unjustly denied pay while in wrecking service at Faribault, Minnesota.

2. That accordingly the carrier be ordered to compensate the above named Carmen for 5¼ hours' pay at the time and one half rate.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, maintains at Des Moines, Iowa, a wrecking derrick and outfit with a regularly assigned wrecking crew comprised of Carmen C. R. Evans, C. F. Ellis, V. N. Ryan, F. B. Conner, E. E. Long, Paul Krainovich, L. M. Bowers and J. R. Comer hereinafter referred to as the claimants.

On January 28, 1960, the claimants were called at 4:00 P.M. to accompany the wrecking outfit to a derailment at Faribault, Minnesota. They arrived at the derailment at 12:45 A.M., January 29, 1960 and worked at clearing the mainline of the derailed equipment until 3:45 A.M., January 29, 1960, at which time they were relieved from service and permitted to go to bed. The claimants at 9:00 A.M., January 29, 1960, resumed clearing the line of the derailed equipment. The claimants were denied pay from 3:45 A.M., January 29, 1960 to 9:00 A.M., January 29, 1960, for a total of 5¼ hours.

This dispute has been handled with all carrier officers authorized to handle disputes, including the highest designated officer, with the result that he too declined to adjust it.

The agreement effective October 16, 1948 as subsequently amended is controlling.

wise 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 benefitted the Carrier as indeed it benefitted 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 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 Rule 7(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."

The carrier feels this claim is totally without merit inasmuch as the claimants were given a 5' 15" "relief period" and during which relief period they were "permitted" to go to bed for all or any part of the "relief period" if desired. The claim should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

of work at an assigned hour is not a period of work, but a part of the rest period. (Award No. 3831)

Under the agreement in force, we are constrained to so hold.

AWARD

Claims denied.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.