

Award No. 4224
Docket No. 3952
2-NYNH&H-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.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carmen, S. Tavano, M. Gleason, R. Hoppin, G. Griffen and W. O'Neill were improperly paid for wrecking service performed on May 23rd and 24th, 1959.

2. That accordingly, the New York, New Haven and Hartford Railroad Company be ordered to additionally compensate the foregoing named carmen in the following amounts claimed:

| | |
|------------|--------------------------------------|
| S. Tavano | — 4 hours & 10 minutes @ double time |
| M. Gleason | — 4 “ & 10 “ @ “ “ |
| R. Hoppin | — 2 “ & 10 “ @ “ “ |
| G. Griffin | — 3 “ & 10 “ @ “ “ |
| W. O'Neill | — 5.67 hours @ “ “ |

EMPLOYEES' STATEMENT OF FACTS: The New York, New Haven and Hartford Railroad Company, hereinafter called the carrier, maintains a car yard facility at Oak Point, New York, which is the home terminal of the Oak Point Wrecking crew and outfit.

S. Tavano, M. Gleason, R. Hoppin, G. Griffin and W. O'Neill, hereinafter referred to as the claimants, are regularly employed by the Carrier as Carmen at Oak Point, N. Y., and are regularly assigned members of the Oak Point wrecking crew. Claimants' regularly assigned work weeks are as follows:

As to Carmen Gleason and Tavano: Mr. Gleason held regular assignment 7:00 A. M. — 3:00 P. M., Friday through Tuesday while Mr. Tavano held regular assignment 7:00 A. M. — 3:00 P. M. Thursday through Monday.

Gleason and Tavano both completed their regular tour of duty at 3:00 P. M. on Saturday, May 23. At 4:45 P. M., May 23, these employes were called to wrecking service and continued therein until 11:45 P. M., a total of seven hours and released. In the case of Messrs. Gleason and Tavano the wrecking service commenced within the twenty-four hour period computed from the beginning of their regular assignment (7:00 A. M., Saturday, May 23) but was not continued to an aggregate of 16 hours, including straight time hours at home station. Therefore, these claimants were properly paid seven hours at time and one-half rate.

On Sunday, May 24, Messrs. Gleason and Tavano were called for wrecking service at 6:10 A. M. They were released from this service at 11:20 A. M. and finished out their tour of duty from 11:20 A. M. to 3:00 P. M. on their regular assignments. They were paid five and one-half hours at time and one-half rate. In this instance, although Messrs. Gleason and Tavano were called for wrecking service within the twenty four hour period computed from 7:00 A. M., Saturday, May 23, they did not aggregate more than sixteen hours of continuous wrecking service when released at 11:20 A. M. They were properly paid at time and one-half rate.

Carrier respectfully submits that we have here involved two separate instances of wrecking service, i.e., rerailing of four cars at Oak Point Float Bridge on Saturday, May 23 and the rerailing of cars at #4 Bridge Lead, Oak Point, on Sunday, May 24.

As information to your Board and in further support of the payment accorded Messrs. Gleason and Tavano carrier is attaching, copy of Mr. E. B. Perry's decision dated October 6, 1949, concerning an alleged violation of Rule 8 at Dover Street which establishes the fact that release of a wrecking crew at home terminal breaks the continuity of their pay. Later, the decision referred to, was discussed and re-discussed with the brotherhood as they claimed that, in fact, **the crew was not released** as stated by the carrier. On March 6, 1950, in view of a dispute as to fact, Mr. Perry rendered another decision, amending his original decision as a matter of equity and without departing, in the slightest degree, from his position that release of a wrecking crew at home terminal breaks the continuity of time for pay purposes. To further illustrate the foregoing, attached please find copy of former Vice President Gaherin's decision dated October 4, 1958, in Railroad Docket 7959.

The claimants in this case have been properly paid under the provisions of Rule 8 and principles established for payment of employes in wrecking service.

There has been no violation of the agreement. 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.

Rule 8 provides that wrecking service employes shall be paid at straight time rate for all time worked, waiting or traveling during their regularly assigned home station hours; that all hours so spent **after** the recognized straight time hours or on holidays or rest days shall be compensated at time and one-half except that all service in excess of sixteen hours shall be compensated at double time.

All five claimants worked all or part of their regular home station hours, 7 A. M. to 3 P. M., on Saturday, May 23, which for two was a day of their regular assignments, but for the other three was a rest day, so that their work was extra.

All five were called for wrecking service at 4:45 P. M., released about seven hours later, called for wrecking service at another point at 6:10 A. M., on Sunday, May 24, and released five or six hours later.

The carrier concedes that in computation of time for double pay the time starts at each employe's regularly assigned home station starting hour, but contends that only the hours of the regular home station assignment are included, and that such hours worked in other than wrecking service on rest days are not. It agrees also that wrecking service which continues without interruption into another twenty-four hour period is to be included for computation of double time pay, but only if it commences within twenty-four hours after the start of a regularly assigned home station work day (not of a rest day), and if it continues without interruption until completed.

Thus, since Saturday was a regularly assigned rest day for three of the claimants, and since the wrecking service was not one uninterrupted assignment, carrier contends that none of the claimants performed service in excess of sixteen hours within the meaning of the statute and that none of them is entitled to any pay at the double time rate.

These contentions of the carrier find no support in Rule 8. It provides that all service performed in excess of sixteen hours will be paid for at double time;—not merely wrecking service and regularly assigned home station service. Therefore extra time worked in other than wrecking service is to be included in the computation, the same as regularly assigned service at home station. The only reference in Rule 8 to recognize straight time hours at home station is the provision that all wrecking service **after** them will be paid for at the time and one-half rate. The word "after" indicates that the regular home station starting time constitutes the beginning of regular work days for wrecking service employes, but does not differentiate between those and regular rest days for computation of double time pay, nor imply that the time of beginning is to be considered as any different on rest days for that purpose; in fact, reason and order suggest that it must be the same.

Nothing in Rule 8 requires that the wrecking service be continuous or constitute only one assignment to be included for computation of double time pay. But of course wrecking service performed after the twenty-four hour period must be continuous with it to be included as part of the "service performed in excess of sixteen hours".

Both assignments of wrecking service on Saturday, May 23, and Sunday, May 24, began within the twenty-four hour period after 7 A. M. on Saturday, and the second was continuous with that period until completed. It follows that the regular or extra home station service and the two periods of wrecking service should be included for computation of pay at the double time rate, and that the hours in excess of sixteen should be compensated at that rate, in accordance with the claim.

This appears to be a case of first impression. Awards 1131, 2706 and 3897 consider the effect of rest periods during a single wrecking assignment under this rule in its former and present wording; but that question is not presented here.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.