

**Award No. 4399
Docket No. 4224
2-DT&I-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**The Second Division consisted of the regular members and
in addition Referee P. M. Williams when award was rendered.**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 57, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

DETROIT, TOLEDO and IRONTON RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement Carman Don H. Betts was improperly paid by the Carrier for wrecking crew service on March 5, 1961.

2. That the Carrier be ordered to compensate Carman Don H. Betts an additional seven (7) hours pay at straight time rate.

EMPLOYES' STATEMENT OF FACTS: Carman Betts hereinafter referred to as the claimant is employed by the Detroit, Toledo and Ironton Railroad Company, hereinafter referred to as the carrier, at Springfield, Ohio.

Claimant Betts is a relief Car Inspector who was assigned to work at Springfield, Ohio from 12:01 A.M. to 8 A.M., Saturday, March 4, and the same hours on Sunday, March 5, 1961. The wrecker unit was dispatched from Springfield at 8 A.M., Saturday, March 4, 1961 to work on a derailment at Summit where the claimant had been called to accompany the wrecking unit. They tied up for rest at 7:30 P.M. March 4, 1961, and went on duty again at 7 A.M., March 5, 1961. The derailment was cleared on Sunday, March 5th, and the crew and equipment were returned to Springfield and tied up at 10 P.M., March 5, 1961.

This dispute has been handled with all carrier officers designated to handle such disputes, including the highest designated officers of the carrier, all of whom have declined to make a satisfactory settlement.

The agreement effective November 16, 1947 is controlling.

POSITION OF EMPLOYES: It is submitted that under the provisions of the aforementioned agreement the claimant was improperly paid for wrecking service on March 5, 1961, especially Rule 8, which reads in part:

An additional advantage given to wrecking crews is that provided in 8(b) which treats time traveling and waiting as time worked and in most instances provides for time and one-half payment instead of the straight time provided other employees under 8(a).

It would be unjust for one man out of a crew of 9 to be paid practically continuous time even though he is released and allowed to go to bed under the terms of rule 8(a) while 8 other men are released from wreck service and allowed to go to bed but without pay for such time resting. This certainly was never the intent of the rule. As stated above, the intent of the rule was to make sure that the man did not receive less than he would have received at his home station.

That this understanding of the rule is correct is borne out by the fact that this claim is the first that we know of since the rule became effective in 1934.

Attention is called to rule 70 quoted above, especially the Note which shows that "present practice * * * may be continued" at Springfield. There are insufficient men on the Springfield car repair track to completely man the wrecker and it is necessary to use some relief car inspectors. Now the Organization wants to penalize the carrier because it made every effort possible to man the Springfield wrecker with carmen.

Betts worked at Springfield 12:01 A. M. to 8 A. M., Saturday, March 4, 1961, then rode for about 4 hours and then worked until 7:30 P. M. March 4. It was absolutely necessary that he have rest and sleep which was afforded him from 7:30 P. M. March 4th until 7 A. M., Sunday, March 5th.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant Betts, a third shift car inspector at Carrier's Springfield, Ohio terminal was additionally and temporarily assigned to the wrecker crew for the purpose of proceeding to a wreck which occurred March 4, 1961. Claimant worked his regular shift March 4 and also worked on the wrecker crew from 8:00 A. M. until 7:30 P. M. that same day at which time the wrecking crew was tied up for rest. The wrecking crew returned to duty at 7:00 A. M., March 5, 1961, cleared the wreck and returned to Springfield at 10:00 P. M. that day. Carman Betts asks that he be also paid for the hours that he would have worked had he remained at his regular assignment, viz, 12:01 A. M. to 7:00 A. M., March 5, 1961.

Rule 8(a) of the applicable Agreement provides:

"An employee regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection

point, will be paid from the time required to leave home station until his return at straight time rate for all time waiting or traveling and in accordance with the practice at his home station for all time worked, except if the employe is released from duty or permitted to go to bed for five (5) or more hours (except during regular working hours) such time shall not be paid for. In no case shall an employe be paid for a total of less than eight (8) hours each calendar day when such irregular service prevents employe from making his regular daily hours at home station * * * (Emphasis ours)

Claimant worked in excess of eight hours on each day that he was away from his regular assignment; he had completed his regular working hours before being released from duty on March 5. Based on the facts before us we are of the belief that the claimant has been paid in accordance with the terms of the Agreement between the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4399

On March 5 the hours from 12:01 A. M. to 8 A. M. constituted regular working hours for the claimant at his home station. While he was away from his home station on the instant assignment he was released from duty at 10 P. M. March 4 to 7 A. M. March 5, thus the hours from 12:01 A. M. to 7 A. M. March 5 constituted time during his regular working hours and such hours were therefore covered by an exception in Rule 8(a) of the applicable agreement:

"An employe regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection point, will be paid from the time required to leave home station until his return at straight time rate for all time waiting or traveling and in accordance with the practice at his home station for all time worked, except if the employe is released from duty or permitted to go to bed for five (5) or more hours (except during regular working hours) such time shall not be paid for * * * All time waiting or traveling during the employe's regular bulletined hours will be treated as time worked * * *"

Under the underscored exception the claimant should have been compensated as claimed. When the language of a rule is so plain as to its mean-

ing it should be enforced as made. The Board has no authority to impose its ideas in a matter that is plainly covered in an agreement rule.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink