

Award No. 4475
Docket No. 4032
2-NYNH&H-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod 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 AND HARTFORD
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carmen G. Ryan, W. Lessard, E. Maguire, J. Hannon, P. Curran, J. O'Neill, J. Gannon, J. McGrath, M. Connolly, D. Twoomey, M. Hegarty, P. Walsh, P. Lacey and T. Egan were improperly paid for wrecking service performed on December 18, 1958.
2. That accordingly the New York, New Haven and Hartford Railroad Company be ordered to additionally compensate each of the foregoing named carmen four (4) hours at straight time.

EMPLOYEES' STATEMENT OF FACTS: The New York, New Haven and Hartford Railroad Company, hereinafter called the carrier, maintains a car yard facility at South Boston Passenger Car Yard, Boston, Mass., which is the home terminal of the South Boston Passenger Car Yard Wrecking crew and outfit. G. Ryan, W. Lessard, E. Maguire, J. Hannon, P. Curran, J. O'Neill, J. Gannon, J. McGrath, M. Connolly, D. Twoomey, M. Hegarty, P. Walsh, P. Lacey and T. Egan, hereinafter referred to as the claimants, are regularly employed as carmen at South Boston Passenger Car Yards, Boston, Mass., and are regularly assigned members of the South Boston Passenger Car Yard wrecking crew. Claimants regularly assigned work weeks are as follows:

All of the regularly assigned members of the wrecking crew work the 8:00 A. M. to 4:00 P. M., first trick, with the following rest days:

G. Ryan, Der. Eng.	— Sat & Sun	J. McGrath, Car. Insp.	— Sat & Sun
W. Lessard, Carman	— Sat & Sun	M. Connolly, Car. Insp.	— Sat & Sun
E. Maguire, Carman	— Sat & Sun	D. Twoomey, Car. Insp.	— Sat & Sun
J. Hannon, Carman	— Sat & Sun	M. Hegarty, Car. Insp.	— Sun & Mon

All service performed in excess of sixteen (16) hours will be paid for at double time."

It is contended by employes that under the second paragraph of Rule 8 and the interpretations thereof (Asst. Vice President Perry's decision of August 3, 1954) claimants are entitled to double time payments immediately upon their being called at 5:00 A. M., December 18, 1958. The principle relied on reads as follows:

"While the facts in each of these cases differed, the ultimate conclusion in each was the same, i.e., that wrecking service actually performed in excess of eight and sixteen hours, respectively, including straight time hours at home station, and computed from starting time of regular assignment, will be paid for at time and one-half and double time, respectively. To be entitled to double time the wrecking service must have started within the twenty-four hour period computed from the beginning of the employe's regular assignment and continued to an aggregate of more than sixteen hours until the wrecking service was completed." (Emphasis ours.)

We submit the instant claim finds no support either in rule or in this general principle.

As shown in the factual portion of this submission, the claimants all have assignments from 8:00 A. M. to 4:00 P. M. and the dates and days involved are regular assigned work days.

To have been entitled to double time at 5:00 A. M. on December 18th the claimants would have had to work in excess of sixteen hours prior to 5:00 A. M. computed from the starting time of their regular assignments on December 17th. This they did not do. As the record will show, within this period claimants had service from 8:00 A. M., December 17th to 9:35 P. M., December 17th, a total of thirteen hours and thirty five minutes.

General Chairman Galligan, in his letter of October 6, 1960, relies on Docket 3899 to support his contention for double time upon recall at 5:00 A. M., December 18, 1958.

We submit that the cases are clearly distinguishable.

Your board will note that in Docket 3899 the claimant had worked a total of sixteen hours, computed from the starting time of his regular assignment, 7:00 A. M. on January 10th, when recalled to wrecking service at 5:00 A. M. on January 11th. There the payment of double time at 5:00 A. M. was in line with the stated principle.

Such is not the instant case. Here claimants did not work sixteen hours in the period computed from the starting time of their regular assignments at 8:00 A. M. on December 17th. The facts show they had worked thirteen hours and thirty-five minutes in the period so computed; thus, under the rule and decisions relied on by employes, time and one-half, not double time, was the proper payment upon recall at 5:00 A. M., December 18, 1958.

The claim for double time 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 fourteen Claimants in this case have been employed as carmen at the Carrier's South Boston (Massachusetts) Passenger Car Yards and are regularly assigned members of the wrecking crew.

In the early morning hours of December 16, 1958, a wreck occurred near East Taunton, Massachusetts. The Claimants were called for wrecking service. The hours worked during said assignment and the pay received by them therefor are shown in the following table:

Day (December, 1958)	Hours Worked	Pay Received
16	8:00 A. M.-4:00 P. M. 4:00 P. M.-8:30 P. M.	8 hours at straight time rate 4½ hours at 1½ rate
17	4:00 A. M.-7:30 A. M. 7:30 A. M.-9:35 P. M.	3½ hours at 1½ rate 14.8 hours at double time rate
18	5:00 A. M.-1:00 P. M. 1:00 P. M.-12:00 MN	8 hours at 1½ rate 11 hours at double time rate
19	12:00 MN-1:00 A. M.	1 hour at double time rate

The Claimants filed the instant grievance in which they contended that they were entitled to the double time rate for the period from 5:00 A. M. to 1:00 P. M., December 18, 1958, instead of the rate of time and one-half actually received. They requested compensation for the difference of four hours each at the straight time rate. The Carrier denied the grievance.

In support of their claim, the Claimants rely on Rule 8, Paragraph 2, of the applicable labor agreement which provides that "all (wrecking) service performed in excess of sixteen (16) hours will be paid for at double time."

The Carrier denies that the Claimants are entitled to the double time payment under consideration because they were released at their home station at 9:35 P. M., December 17, 1958, and thus did not continuously work 16 hours prior to 5:00 A. M., December 18, 1958, when they again went on active duty.

A critical examination of Paragraph 2 of Rule 8 has satisfied us that it is neither clear nor unambiguous. Plausible contentions can be made for different interpretations. The Paragraph is, therefore, subject to a reasonable construction. In a previous case involving the same labor agreement and the same parties, we held that "the wording of the rule (Rule 8, Paragraph 2) that all service in excess of 16 hours is compensable at a double time basis seems clearly to contemplate all service during the particular wrecking assignment." See: Our Award 3897. We have carefully reviewed our prior Award and

have reached the same conclusion. We, therefore, adhere to it. See: Award 3991 of the Second Division. We also note that our interpretation is in conformity with the opinion expressed by the Carrier's former Assistant Vice President of Labor Relations, E. B. Perry, on the meaning of Paragraph 2 of Rule 8. See: Organization's Exhibit "A".

In summary, we hold that the instant claim is justified in accordance with Paragraph 2 of Rule 8 of the labor agreement.

Claim sustained.

AWARD

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

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

Dated at Chicago, Illinois, this 28th day of February, 1964.