

Award No. 4505

Docket No. 4291

2-MKT-CM-'64

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. 8, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling agreement when Carmen H. O. Souter, A. F. Souter, R. L. Hataway, E. E. Treadway and J. W. Quirk were not called to accompany the wrecking outfit when it left Parsons, Kansas, at 3 A. M. on December 28, 1960.

2. That accordingly, the Carrier be ordered to compensate the aforesaid five (5) Claimants for one hour preparatory time from 2 A. M. to 3 A. M. and four (4) hours at the time and one-half rate from 3 A. M. to 7 A. M. for this violation, which was the time allowed the relief engineer who was called and accompanied the outfit.

EMPLOYEES' STATEMENT OF FACTS: At Parsons, Kansas, the carrier maintains a wrecking outfit and a regular assigned crew consisting of the following: H. O. Souter, A. F. Souter, R. L. Hataway, E. E. Treadway and J. W. Quirk.

On December 28, 1960, at 2 A. M. the wrecking outfit, including the relief engineer, was called to go to Adair, Oklahoma to a derailment.

In accordance with Rule 7(d) of the agreement the relief derrick engineer was allowed one (1) hour preparatory time (from 2 A. M. to 3 A. M.) at straight time rate. The outfit departed Parsons at 3:00 A. M. and from that time until 7 A. M. the relief engineer was paid at the rate of time and one-half in accordance with rule 7(e) of the agreement.

At 7 A. M. on December 28, 1960, the claimants left Parsons, Kansas by automobile for the scene of derailment.

This dispute has been handled with all officers of the carrier designated to handle disputes, including the highest Officer, all of whom have declined to adjust it.

Clearly there is no merit to this claim for four hours at the penalty rate for travel time not required by the carrier nor performed by the claimants, and it should be denied.

The employees and organization have not only insisted upon payment of the four hours at time and one-half, as hereinbefore shown, but have insisted upon payment of 1 hour at the straight time rate to each claimant for so-called "preparatory time".

Preparatory time is provided in rule 7 (d) of the controlling agreement and its original purpose was to compensate employees called for emergency road service for the time spent by them in getting their tools and materials together for road trips. It does not apply when such employees are called during their regularly assigned hours, as was the case here.

Under the provisions of rule 7 (d), the one hour preparatory time is **only** paid when the employee is **called** for emergency road service or wrecking service **during overtime hours**. That is all that the rule requires, and that is all that this carrier has ever done. Unless the employee is called for emergency road or wrecking service during overtime hours it has never been considered that he was entitled to the one hour preparatory time.

In the instant case it is not disputed that the claimants were **not** called during overtime hours. This fact is not only not in controversy, but is asserted by the claimants as the basis for their claim. They assert that they were not called outside the hours of their assignment, and that they were entitled to be so called. Carrier has of course denied this unsupported allegation and has shown it to be unsupported by any agreement rule.

Since, in the instant case, the claimants were not called during overtime hours, nor were they required to be so called, the conclusion that they are not entitled to the payment of the one hour preparatory time claimed by them is clearly inescapable. There is simply no merit to this claim, nor any support for it in the agreement rules, and it should be denied.

For each and all of the foregoing reasons the carrier respectfully requests the Second Division to deny this claim in its entirety.

All data submitted in support of the carrier's position have heretofore been submitted to the employees or their duly accredited representatives, or originated with the employees or their duly accredited representatives and they are fully conversant with same.

Carrier requests ample time and opportunity to reply to any and all allegations contained in the employees' and organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the organization in alleged unadjusted dispute, claim or grievance.

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.

Claimants are Carmen employed by the Carrier at Parsons, Kansas and are the members of the regularly assigned wrecking crew at that point.

On December 28, 1960 at 2 A. M., the wrecking outfit at Parsons was called to go to a derailment at Adair, Oklahoma. The outfit departed Parsons at 3 A. M. accompanied by the engineer only. Claimants were transported to Adair by automobile, leaving Parsons at 7 A. M., December 28, 1960.

The engineer was paid for one hour preparatory time at the straight time rate (2 A. M. to 3 A. M.) and for four hours at the time and one-half rate (3 A. M. to 7 A. M.). Claimants are seeking the same compensation as that paid to the engineer for these hours.

Rule 73 of the controlling agreement reads in part as follows:

“(c) When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. * * *.”

Rule 7 of the controlling agreement is entitled “Emergency Road and Wrecking Service” and reads in pertinent parts as follows:

“(d) If required to leave home station during overtime hours, they will be allowed one (1) hour preparatory time at straight time rate.

(e) Wrecking service employes will be paid under this rule, except that all time working, waiting or travelling on holidays will be paid for at rate of time and one-half, and all time working, waiting or travelling on week days after the recognized straight time hours at home station will also be paid for at rate of time and one-half.”

It is Carrier's position that Rule 73 (c) (supra) does not give the wrecking crew the right to physically accompany the wrecking outfit, but is intended only to give the crew the right to the wrecking service, for which it is sent and used.

The Rule as written and heretofore interpreted by this Division (cf. our Award 3864) does give the regularly assigned wrecking crew the right to accompany the outfit, and having been deprived of this right in the instant case, these Claimants are entitled to the compensation they would have earned had they been properly called under the Rule.

AWARD

Claim 1: Sustained.

Claim 2: Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.