



Award No. 4815
Docket No. 4769
2-NYNH&H-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the New York, New Haven & Hartford Railroad Company violated the terms of the current agreement, Rule 111, when it failed to call E. C. O'Banks and W. E. McVey, regularly assigned members of the crew of the Maybrook, N.Y., wrecking outfit for wrecking service to Danbury, Conn., on Saturday, February 23, 1963.

2. That accordingly the New York, New Haven & Hartford Railroad Company be ordered to additionally compensate E. C. O'Banks and W. E. McVey as follows:

E. C. O'Banks—nineteen (19) hours at double time—less eight (8) hours at straight time already paid.

W. E. McVey—Sixteen (16) hours at time and one-half. Three (3) hours at double time.

EMPLOYEES STATEMENT OF FACTS: The New York, New Haven & Hartford Railroad Company, hereinafter referred to as the carrier, maintains a wrecking outfit at its Maybrook, N.Y., Car Department.

E. C. O'Banks and W. E. McVey, hereinafter referred to as the claimants are employed by the carrier, at this facility, as car inspectors, with hours and rest days as follows:

E. C. O'Banks—8:00 AM to 4:00 PM—Wed. thru Sun.—Rest Days Mon. & Tues. W. E. McVey—12:00 mid. to 8:00 AM—Sun. thru Thur.—Rest Days Fri. & Sat. the claimants are also regularly assigned members of the crew of the Maybrook, N.Y., wrecking outfit.

Carrier's decision of January 22, 1960, in a claim involving dispute as to whether the claimants had or had not been called at the time the wreck crew were being assembled. In the case of Mr. Lauriola, the telephone company verified that his phone was out of order, and his claim was denied. In the case of Mr. D'Agostino, there were conflicting statements by the clerk, who said she called him but got no answer, and by the claimant, who said he was home but received no call, and the carrier offered to dispose of his claim by payment of straight time for fourteen and one-half hours, rather than eight hours at time and one-half and six and one-half hours at double time as claimed.

This settlement was accepted by the employees—see copy of General Chairman Galligan's letter of February 23, 1960.

Notwithstanding this precedent on the property, and disregarding the long established principle set by the various divisions of the board, that the penalty payment for work not performed is straight time, the employees have decided to "Go for broke." Apparently, they are approaching your board on the theory that they will not get less than straight time—which the carrier has already offered—and hoping that the board will up the ante to punitive time, including double time.

We respectfully suggest that the employees not be permitted to "use" your board in this fashion, and that having already refused to accept what they are sure your board will award, their claim should now be dismissed in its entirety.

Carrier would also point out that in General Chairman Galligan's letter dated March 12, 1964, he refers only to the non-acceptance of that part of our decision relating to the proffered settlement with Claimant O'Banks. No mention is made anywhere in this letter as to the acceptance or non-acceptance of our denial of Mr. McVey's claim.

For all of the reasons set forth herein, we again respectfully request that this claim be dismissed.

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 were regularly assigned members of a wrecking outfit at Maybrook, N.Y. The crew had been in service to Holmes, N.Y., from 6:30 PM, February 21, 1963, to 11:00 PM, February 22, 1963, and were released at that time. Claimant E. C. O'Banks was included in the wreck crew so assigned but Claimant W. E. McVey did not accompany them. On Saturday, February 23, 1963, the wrecking outfit was called for service to Danbury, Conn., at 10:30 AM and were released from this service at their home terminal at 7:30 PM, February 23, a total of nineteen (19) hours of wrecking service. The two claimants were not called and did not accompany the outfit.

There is no dispute but that the regularly assigned crew had the right under Rule

111 to accompany the wreck crew but the contention of the Carrier is that the Claimants were not available when they were needed.

Carrier contends that Claimant O'Banks' home was called three times but no answer was received. O'Banks asserts that he was home with his family as he had recently arrived there after the Holmes assignment and received no telephone calls. Carrier admits that the Relief Foreman who attempted to call O'Banks did not verify the "No Answer" with the telephone operator. Carrier had the burden of proving that he was not available and as Claimant O'Banks had just completed the assignment to Holmes at 11:15 P.M. the Carrier should have exercised more diligence in verifying the "No Answer" with the telephone operator. As Saturday was a work day for Claimant, he worked eight hours on his regular assignment for which he was paid.

Claimant McVey was regularly assigned as a car inspector with hours and rest days, as follows: 12:00 Midnight to 8:00 A.M. Sunday through Thursday, with rest days Friday and Saturday. He had reported off sick from his regular assignment prior to the calling of the wreck crew to Holmes on Thursday, February 21 and failed to report for his regular assignment on February 22. When the wreck crews were called on the early morning of Saturday, February 23, there was no one available to send to his home two miles away to call him and he had no telephone. Under all of these circumstances the Carrier is justified in its claim that McVey was not available and his claim will be disallowed.

Claimant O'Banks is entitled to recover compensation for 11 hours at the pro rata rate of pay as Carrier has not established he was not available to have covered the assignment.

See Award 3259 — Hornbeck.

A W A R D

Claim of E. C. O'Banks allowed in accordance with the Findings.

Claim of W. E. McVey disallowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1966.