



Award No. 5007
Docket No. 4931
2-CMStP&P-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the current Agreement was violated when Carrier failed to properly compensate members of the Tacoma Wrecking Crew for the hours from 7:15 P. M., March 30, 1964 to 4:00 A. M. March 31, 1964.

2. That accordingly the Carrier be ordered to additionally compensate the following members of the Tacoma wrecking crew:

F. E. Vettters	Wrecking Engineer
M. L. Medley	Carman
A. Martelli	Carman
A. L. Heinz	Carman
R. M. Richard	Carman

in the amount of eight (8) hours, forty-five (45) minutes at time and one-half rate of applicable rate.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, maintains a wrecking outfit and a regularly assigned wrecking crew comprised of the above named claimants at Tacoma, Washington.

This wrecking crew was called and dispatched to Raymond, Washington to pick up a derailment. After this derailment was cleared and all work connected with such derailment had been performed, the wrecking train departed from Raymond for the trip to their home station of Tacoma, Washington.

The carrier submits that it is readily apparent that by the claim which they have presented the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your board is not empowered to write new rules or to write new provisions into existing rules.

It is the carrier's position that there is absolutely no basis for the instant claim as it is in no way supported by past practice, schedule rules or agreements and we respectfully request, therefore, that the claim 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 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 members of a wrecking crew that was called from their home station at Tacoma, Washington, to clear up a derailment at Sutico, Washington. After all work had been completed on the derailment, they left Sutico for the return trip to Tacoma but, after proceeding about fifty miles, the sixteen-hour law caught the operating crew and the train was held at Chehalis, Washington, from 7:15 P.M. to 4 A.M. the following morning. While at Chehalis, Claimants were permitted to go to bed if they so desired.

In Petitioner's view, Claimants are entitled to compensation for the time held at Chehalis since Rule 10(a) prescribes that an employee called for emergency road service away from his regular place of assignment be paid for waiting and traveling time. It is Carrier's position, on the other hand, that the claim lacks merit because during their time on the road, Claimants were paid at least eight hours each calendar day and were "relieved from duty and permitted to go to bed for five (5) or more hours". Carrier emphasizes Rule 10(b)'s provision that "such relief time will not be paid for" where those conditions have been met.

The ultimate question is whether "relief time" as used in Rule 10(b) can validly be applied to the present situation where all derailment work had been completed and Claimants were on their way home before the sleeping time in question was given them. The great weight of authority that has passed on that or substantially similar points is to the effect that rest period given after completion of wrecking work is compensable waiting or traveling time. See Awards 1028, 1048, 1078, 1355, 1429 and 4958. That some of the rules considered by these Awards differ in language from Rule 10(a) and (b) of the agreement here under consideration does not detract from the broad and clear principle that those authorities enunciate. In our opinion, they are not unsound although we recognize that Award 1637 appears to hold to the contrary.

In the present case, Claimants were called to perform a specific duty, namely, to work on a derailment. After that duty had been completed, they

were on travel or waiting time until they reached their home destination.
It is not unreasonable to apply the majority rule under these circumstances.

The claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

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