

Award No. 5181
Docket No. 4955
2-B&OCT-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE BALTIMORE AND OHIO CHICAGO TERMINAL
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Baltimore & Ohio Chicago Terminal Railroad violated the current working agreement when they paid the straight time rate instead of the double time rate to carmen W. Kussmaul, J. Laciak, F. Ritter, J. Malatinka, A. Hernandez, L. Britton and H. Roberts, on May 27, 1964.

2. That accordingly the Baltimore & Ohio Chicago Terminal Railroad make whole carman Kussmaul, Laciak, Ritter, Malatinka, Hernandez, Britton and Roberts in the amount of 8 hours each for 7:00 A. M. to 3:00 P. M. for May 27, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Baltimore & Ohio Chicago Terminal Railroad, hereinafter referred to as the carrier, maintains a wreck crew at Barr Yard, Chicago, Illinois, composed of carmen W. Kussmaul, J. Laciak, F. Ritter, J. Malatinka, A. Hernandez, L. Britton, and H. Roberts, hereinafter referred to as the claimants.

For several days this wreck crew was involved in rerailing a wreck at Walkerton, Indiana. On the pertinent days involved, May 26th and May 27th, 1964, the crew was called to work at 7:00 A. M. on May 26th; they worked until 9:00 P. M. May 26, 1964, at which time it was decided to move the hospital train early the next morning. They were then called at 4:00 A. M. May 27th to prepare to move the so-called hospital train to Barr Yard, Illinois. They worked from 4:00 A. M. to 3:00 P. M. May 27th.

From 7:00 A. M. May 26, 1964 to 7:00 A. M. May 27, 1964, the wrecking crew worked a total of 17 hours (7:00 A. M. to 9:00 P. M. May 26th and 4:00 A. M. to 7:00 A. M. May 27th) and under Rule 5, paragraph E, all overtime beyond 16 hours service will be paid for at the double time rate. The carrier paid the claimants the 17th hour (6:00 A. M. to 7:00 A. M. May 27th) at double time rate, but refused to continue paying the double time rate from

time on the road * * * a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relieved periods will not be paid for; * * *."

Thus, the rules agreement on the B&OCT specifically comprehends a break in the continuity of service under circumstances where such employees are relieved from duty.

CARRIER'S SUMMARY: In the instant case when the claimants were returned to service on May 27th, the rules governing payment at the home station became applicable. Thus, the claimants were properly paid at the straight time rate from 7:00 A. M. to 3:00 P. M. on the 27th. The problems that confronted this Board in that long line of awards arising on the property of the New Haven and upon which reliance has been placed by the Carmen's Committee on the B&OCT simply do not arise and are not germane in the instant case. There has never been any serious objection taken by the Carmen's Committee on the B&OCT to this accepted and standard method of compensating wreck crew members over the years. In effect, this is a "test" case. It is a plain attempt on the part of the Carmen's Local Committee on the B&OCT to place an interpretation upon the rules agreement, one that is completely inimical to the standard and accepted method of interpretation and application over the years. There is no proper basis for such an interpretation or application.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

The claim of Employes alleges that seven named carmen of Carrier's wreck crew were paid only the straight time rate instead of double time for certain hours worked when they were called out and performed wreck crew service away from home station during two consecutive days in May, 1964. On May 26th the crew was called to work at 7:00 A. M., which was the starting time of their regular shift; they worked continuously until 9:00 P. M. of that day and then were relieved and permitted to go to bed. At 4:00 A. M. the next morning, May 27th, they resumed work and continued to 3:00 P. M. of that day.

Rule 5(e) of the applicable Agreement calls for payment of double time for all "overtime beyond sixteen (16) hours service computed from the starting time of the employes' regular shift" and also if such service continues beyond 24 hours from starting time of regular shift. Apparently Carrier made no objection to paying Claimants and did pay them at the double time rate for the 17th hour the crew continued work on the wreck (6:00 A. M. to 7:00 A. M., May 27th), but then Carrier refused payment at the rate for the additional time thereafter during which Claimants continued to work until the

wreck had been cleared at 3:00 P. M. This refusal, the Employees aver, was a violation of the Agreement.

Carrier states that none of the claimants was "required to render service beyond twenty-hour (24) hours computed from starting time of his regular shift" (Rule 5e), but insists that "On the contrary each of the claimants here was relieved from duty and permitted to go to bed under an application of the 'wreck service' rule" (Rule 8); in other words carrier appears to contend that the rest period broke the continuity of the overtime service and started a new "regular shift" for each man concerned, a contention that would seem negatived by the fact that Carrier, as above mentioned, paid Claimants double time for the 17th hour, to wit 6:00 A. M. to 7:00 A. M. on May 27th.

A study of the comparatively few authorities brought to our attention during consideration of the issues here presented, all of them having arisen under different facts and different rules, has proved of little assistance. However, we are of the opinion that a literal analysis of the rules involved as understood by the parties when agreeing to their adoption compels the conclusion that here there was a violation of the Agreement by the Carrier as alleged by the Employees. Their claim should 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 26th day of May 1967.