

Award No. 5387

Docket No. 5237

2-CofG-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carrier violated the controlling Agreement, when on February 4 and 6, 1965, Carman R. P. Smith, Columbus, Georgia, was refused double time rate of pay for work performed while a member of the wrecking crew.

2. That Carrier be ordered to comply with the controlling Agreement and pay Carman R. P. Smith an additional seven and one-quarter ($7\frac{1}{4}$) hours at straight time rate for February 4, 1965, and also, pay for an additional four (4) hours at straight time rate for February 6, 1965.

EMPLOYEES' STATEMENT OF FACTS: Carman R. P. Smith, hereinafter referred to as the Claimant, is employed by the Central of Georgia Railway Company, Columbus, Georgia, hereinafter referred to as the Carrier, and was working in emergency road service as a member of the wrecking crew on February 4 and 6, 1965.

Claimant's shop assignment at that time was from 8:00 A.M. to 4:00 P.M., Monday through Friday and his rest days being Saturday and Sunday.

On February 3, 1965, Claimant worked seven (7) hours overtime and was called for wrecking service before his assigned shop hours, i.e. at 6:00 A.M. and was relieved at 9:30 P.M. on February 4, 1965. Claimant was paid fifteen and one-half ($15\frac{1}{2}$) hours at time and one-half rate for February 4, 1965. Since he worked seven (7) hours overtime on February 3, 1965, Claimant should have been paid one (1) hour at time and one-half rate and fourteen and one-half ($14\frac{1}{2}$) hours at double time, whereas he was only paid fifteen and one-half hours at time and one-half rate.

Before his regular assigned hours on February 6, 1965, Claimant was called for wrecking service, i.e., at 6:30 A.M. and was relieved at 8:00 P.M. this same date. Since he worked two and one-half ($2\frac{1}{2}$) hours overtime on February 5, 1965, Claimant should have been paid five and one-half ($5\frac{1}{2}$)

Third Division Award 10323, Referee McDermott:

"The claim, however, must fail for lack of proof. Mere assertions of the Claimant are not sufficient to substantiate a claim."

And there are numerous other awards of all four Divisions of the Adjustment Board — all of which clearly state that the burden of proof is on the claimant party to prove an alleged violation of the agreement. To date, the Brotherhood has produced no evidence of any violation.

CONCLUSION

Carrier has shown that there is no rule, interpretation or practice to support the claim and argument of the Brotherhood. The claimant is not entitled to be paid as alleged in the claim. Carrier has paid the claimant in accordance with the agreement, interpretations and historical practice and we are amazed that the Brotherhood would at this late date enter any objection thereto. As a matter of record, Carrier has continued to apply the agreement and practice in dozens of instances since these three claims (Cases 7318, 7319 and 7320) were filed, and no objection has been made by the Brotherhood. Obviously, Carrier is continuing to pay the carmen properly.

In view of all the facts and circumstances shown by the Carrier we respectfully request your Board to deny this claim in its entirety.

Carrier, not having yet seen the Brotherhood's Ex Parte Submission, reserves the right, after the Brotherhood has set forth its position to the Board, to present such additional evidence and argument as it deems necessary.

All facts submitted in support of Carrier's position in connection with this claim have been presented to the Brotherhood representatives, and made a part of this dispute.

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.

Claimant had assigned hours at Columbus Shop from 8:00 A. M. until 4:00 P. M., Monday through Friday, with rest days of Saturday and Sunday. On Wednesday, February 3, Claimant was called on emergency service to derailment. On Thursday, February 4, Claimant went on duty at 6:00 A. M. and was relieved at 9:30 P. M. the same date. On February 5, he worked his regular hours. On Saturday, February 6, a rest day, he went on duty at 6:30 A. M., and was relieved at 8:30 P. M. on the same date.

The agreement between Central of Georgia Railway Company and various crafts represented by System Federation No. 26 of the Railway Employees Department of the American Federation of Labor dated September 1, 1949,

and the subsequent amendments represented by the Agreed Upon Interpretations of Overtime Rules 6, 7, 10 and 111, at a conference held at Savannah, Georgia, on March 17 and 18, 1953, and subsequent letter of understanding dated September 4, 1953, clarifying Section 4, Page 2, of said agreement is controlling.

Rule 111 and Rule 10 as applied to the Agreed Upon Interpretation are the rules involved in this dispute. Rule 111 of the Agreement is as follows:

“Wrecking crews, including wrecking derrick engineers and firemen and two (2) groundmen, will be composed of carmen who will be regularly assigned by bulletin and will be paid as per Rule 10.

For wrecks or derailments outside of yard limits, the regularly assigned crews will accompany the wrecking outfit. Within yard limits, when wrecker is needed, necessary number of members of wrecking crews will be called to perform the work.

Meals and lodging will be provided by the company while crews are on duty in wrecking service.

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.”

Rule 10 of the Agreement is as follows:

“An employe regularly assigned at a shop, engine house, repair track, or inspection point, when called for emergency road service away from such shop, engine house, repair track or inspection point, will be paid from the time called to leave home station, until his return for all service rendered in accordance with the practice at home station, and will be paid straight time rate for straight time hours and overtime rate for overtime hours for all time waiting or traveling.

If during the time on the road, not including waiting or traveling periods, 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; provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. Employes will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at point designated.

Wrecking service employes will be paid in accordance with this rule.”

Item 8 of the Agreed Upon Interpretation of March 17 and 18, 1953, is as follows:

“Shop Assignment 8:00 A. M. to 4:30 P. M. Monday through Friday.

Called for emergency work at 12 midnight Monday, and worked until 10:00 P. M. Tuesday — 22 hours.

He would be paid from 12 Midnight Monday to 8:00 A. M. Tuesday — 8 hours at time and one-half, and from 8:00 A. M. Tuesday until 10:00 P. M. Tuesday he would be paid 14 hours at double time."

Under the above Item 8, Claimant should be paid 8 hours at time and one-half rate (6:00 A. M. to 2:00 P. M. — 8 hours), and double time for 7½ hours (2:00 P. M. to 9:30 P. M.) for Thursday, February 4. Items 2 and 7 of the 1953 Interpretation Agreement are as follows:

ITEM 2. Shop Assignment 8:00 A. M. to 4:30 P. M. Monday through Friday.

Called 12:00 Noon, Sunday (Rest day) and worked until 8:00 P. M. Monday, (Regular work day).

He would be paid time and one-half from 12:00 Noon Sunday until 4:00 A. M. Monday — 16 hours. Double time would start at 4:00 A. M. Monday and continue until 8:00 P. M. Monday — 16 hours.

ITEM 7. Shop Assignment 8:00 A. M. to 4:30 P. M. Monday through Friday.

Called for emergency work at 2:00 A. M. Sunday and worked until 2:00 A. M. Monday.

He would be paid from 2:00 A. M. Sunday until 6:00 P. M. Sunday — 16 hours, at time and one-half rate, and would be paid double time from 6:00 P. M. Sunday until 2:00 A. M. Monday — 8 hours at double time."

Under the above Items 2 and 7, Claimant should be paid 13½ hours at the time and one-half rate for Saturday, February 6

AWARD

Claimant to be paid in accordance with opinion.

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

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 8th day of March 1968.