



Award No. 5767

Docket No. 5605

2-CM&STP&P-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
CO.**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current Agreement was violated when Carrier held the Miles City, Montana wrecking crew at Hettinger, N. Dakota after they had completed wrecking operation at Lemmon, So. Dak. and failed to properly compensate them for such time.
2. That accordingly the Carrier be ordered to compensate the following named employees:

Leonard Leidholt
Virgil Rask
Victor Hough
Ambrose Sweeney
Martin Kelm

for the following dates and for the time listed:

March 8, 1966

5:00 P.M. to Midnight — 7 hours at time and one-half

March 9, 1966

12:01 A.M. to 8:00 A.M. 8 hours at time and one-half.

6:30 P.M. to Midnite — 5 hours and 30 minutes at time
and one-half

March 10, 1966

12:01 A.M. to 8:00 A.M. 8 hours at time and one-half.

5:00 P.M. to 7:45 P.M. 2 hours and 45 minutes at time
and one-half.

EMPLOYEES' STATEMENT OF FACTS: The above listed individuals, hereinafter referred to as the claimants, are all regularly assigned employees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., hereinafter referred to as the carrier, at Miles City, Montana. Claimants are also members of the regularly assigned wrecking crew at Miles City, Montana.

Through the instant claim now before your honorable board for adjudication the employees are attempting to set aside that portion of Rule 10(b) which reads as follows:

"If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief time 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."

The carrier submits that the aforequoted portion of rule 10(b) specifically precludes payment to employees who are relieved and permitted to go to bed for five (5) or more hours "during the time on the road". In other words, while away from their home terminal, if at any time the employees are relieved from duty for a period of five (5) hours or more (provided each employee is compensated no less than eight (8) hours each calendar day while away from his home terminal), such relief time will not be paid for.

The employees cannot argue that they were not "on the road", i.e. away from their home terminal of Miles City, Montana on March 8, 9 and 10, nor can they argue that they were not performing either wrecking service or emergency road service on the dates of March 8, 9 and 10, 1966 Carrier clearly sets forth the duties performed by the claimants on these three dates and they have not, nor can they, refute these undeniable facts.

Therefore, in accordance with the aforequoted portion of schedule Rule 10(b), each claimant was fully and correctly paid for all services rendered, either wrecking or emergency road service, on the dates of March 8, 9 and 10, 1966.

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 have under the rules and in the 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 for the reasons outlined herein the instant claim is barred and must be dismissed and it is our further position that the instant claim is in no way supported by past practice, schedule rules or agreement and we respectfully request 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 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 waived right of appearance at hearing thereon.

Carrier moves for dismissal of the Claim for alleged failure of Petitioner to comply with time limitations prescribed in Article V of the August 21, 1954 Agreement. Claimants, on March 12, 1966, filed with the Car Foreman time slips for time engaged in wrecking service which included claim

for time and rates on March 8, 9, and 10, 1966, as set forth in the Claim before us. The Car Foreman disallowed the time and rates claimed for those days, in part, on March 18, 1966. Petitioner filed Claim of contractual violation with the Foreman on May 5, 1966, and appealed his declination dated June 9, 1966 to the Master Mechanic on July 12, 1966. The filing of a time slip with a Foreman is an administrative procedure. It is not a claim of Agreement violation. Unless and until the time and rates set forth in the time slip, by the employe, is rejected by Carrier, in whole or part, there is no occurrence giving rise to an alleged contractual violation. The time limitation tolls from the date of rejection of the time and rate which is the occurrence giving rise to the Claim; not from the day or dates for which the time and rate are claimed in the time slip. We find no failure of compliance with the time limitations or process of filing and appealing prescribed in Article V. Motion **DENIED**.

Claimants are regularly assigned Carmen at Miles City, Montana and also are members of the wrecking crew at that point,

On March 5, 1966, a work train consisting of four diesel units, a caboose and a rotary wedge snow plow was derailed west of Lemmon, South Dakota, while cleaning Carrier's main line, rendered impassible by an extremely heavy snowfall. The wrecking crew, consisting of the five Claimants, together with the wrecking outfit consisting of a derrick and five work cars was dispatched to rerailed the derailed work train. The last unit of the derailment was rerailed at 7:45 P.M. on March 7. When the work extra was rerailed it proceeded to go about its business of plowing snow, however, the wings of the rotary wedge plow broke, at a time thereafter not shown in the record, and Claimants were utilized to effect temporary repairs on the broken wings sufficient to permit continued use in freeing the main line tracks. This work was completed at 4:10 A.M. on March 8, 1966. At that time the train and engine crew of the wreck train were approaching the 16th hour of continuous work. The wreck train and its consist was moved west of the derailment site and spotted on a siding at Hettinger, North Dakota.

On March 8, from 10:00 A.M. until 5:00 P.M. Claimants worked on the wrecking outfit straightening up the work cars until 5:00 P.M. when they were released from duty and permitted to go to bed, if they so desired.

On March 9 Claimants resumed work at 8:00 A.M. and travelled from Hettinger to the derailment site via a motor car, trailing several push cars, where they loaded equipment left by the wreck train along the right of way into the push cars. Then they returned to the wreck train at Hettinger where they proceeded to load the equipment and place it in its proper place in cars of the wreck train. Also on March 9, two of the five Claimants were taken from Hettinger via truck into Lemmon, South Dakota, to again rerailed the snow plow (only snow plow off, not the four diesels or caboose) and effect minor repairs on the snow plow. The remaining three Claimants who remained at Hettinger completed the loading of the collected equipment on the wreck train and after 5:00 P.M. two of the said remaining three Claimants checked over and inspected another work extra which was moving through Hettinger — the fifth Claimant remained at Hettinger on the wrecking outfit and worked as camp cook and attendant. At 6:30 P.M. all Claimants were back at Hettinger at the wrecking outfit and were released from duty free to go to bed, if they so desired.

On March 10, all five Claimants resumed working at 8:00 A.M. in and around the wrecking outfit, one acting as cook and attendant, the other four

putting the wrecking outfit in order. At 5:00 P.M. the wrecking foreman and the five Claimants travelled by truck from the wrecking outfit at Hettinger to McLaughlin, South Dakota, to inspect and ready some cars, freed from the snow, for the train movement, which work was completed at 7:45 P.M.

From 7:45 P.M. on March 10, 1966, until the Claimants and wrecking outfit arrived Miles City (home station) at 1:00 P.M. March 12, 1966, the Claimants were paid continuous time and there is no dispute relative to that period; nor, is there a dispute over compensation paid each Claimant commencing from the time they were called for work on March 5, 1966, up to 5:00 P.M. March 8, 1966.

The dispute as to compensation involves, with one exception, the periods of time all five Claimants were relieved from duty, while at Hettinger, and permitted to go to bed, if they desired, on:

"March 8 from 5:00 P.M. to 12 Midnight
March 9 from 12:01 A.M. to 8:00 A.M.
March 9 from 6:30 P.M. to 12 Midnight
March 10 from 12:01 A.M. to 8:00 A.M.
March 10 from 5:00 P.M. to 7:45 P.M."

(NOTE: From 5:00 P.M. to 7:45 P.M., March 10, the Carrier recognizes an obligation to compensate Claimants for work performed.)

The Pertinent Rule of the Agreement is Rule 10 which in material part reads:

"(a) An employe regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency road service away from such shop, enginehouse, repair track or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station, **and will be paid straight time rate for time waiting or traveling during straight time hours at home station and time and one-half rate for time waiting or traveling during overtime hours.**" (Emphasis supplied)

"(b) If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief time 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. * * *" (Emphasis supplied)

It is the position of Petitioner that Claimants were in a "waiting or travelling" status from the time the last unit of the derailment was re-railed at 7:45 P.M. on March 7 and they departed the site of the wreck at 4:10 A.M. March 8 until they arrived at their home station, Miles City, at 1:00 P.M. March 12, 1966, which includes therein the times set forth in the Claim therefore, they were contractually entitled to be paid continuous time for that period as provided for in Rule 10(a). Carrier responds that during the hours of the days set forth in the Claim Claimants were "relieved from duty and permitted to go to bed for five (5) or more hours" and Rule 10(b) prescribes "such relief time will not be paid for."

In Award No. 5007 (Weston) involving the parties herein we interpreted and distinguished Rule 10(a) and 10(b). We quote, with emphasis supplied:

"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 employe 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."

We reaffirm the holdings in that Award.

In the instant case, as in Award No. 5007, 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. We enlarge upon that holding only to the extent that work on a derailment terminates not upon the rerailing of all cars but in addition the gathering up and placing on the wreck train all of its tools and equipment used in the operation. As we have shown above Claimants completed the rerailment at 7:45 P.M., March 7. There is no showing by Carrier that the wrecking crew could not have immediately thereafter collected its tools and equipment and departed the site, homeward bound, within the Hours of Service of the train crew. Carrier chose to hold the wrecking crew at the site, from 7:45 P.M. March 7 to 4:10 A.M. March 8. None of the other work performed by Claimants while the wreck train was set out on the siding at Hettinger, detailed above, was part of the specific duty of work on the derail-

ment. The orderly replacement of tools and equipment in the cars of the wreck train could have been accomplished en route homeward or upon arrival at the home station. This is not to say that Carrier was barred from directing that Claimants perform the work which they accomplished while held at Hettinger. But, Carrier, by its unilateral action or actions, cannot, without Agreement violation, detract from contractually prescribed compensation for a wrecking crew while assigned to and holding such status. We find, from the facts of record, that Claimants were on waiting time while held at Hettinger and Rule 10(a) prescribes the contractual rate of compensation during that period. We will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1969.