



Award No. 5840

Docket No. 5715

2-MP-CM- '70

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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the current agreement when they failed to compensate the members of the St. Louis, Missouri, wrecking crew from the time they were called from their rest period, 4:30 A.M. to 5:30 A.M., July 17, 18, 19, 20, 21, and 22, 1967, and one (1) hour at the punitive rate between 5:00 A.M. and 6:00 A.M., July 23, 1967.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate the following members of the wrecking crew in the amount of one (1) hour each at the punitive rate between the hours of 4:30 A.M. and 5:30 A.M., July 17, 18, 19, 20, 21, and 22, 1967, and one (1) hour at the punitive rate between the hour of 5:00 A.M. and 6:00 A.M., July 23, 1967:

R. H. Mueller,	Wrecking Engineer
R. T. Meyer,	Carman
W. L. Wenzel,	Carman
H. O. Carr,	Carman
R. Schaefer,	Carman
E. Harris,	Carman

EMPLOYEES' STATEMENT OF FACTS: At Twenty-First Street, St. Louis Missouri, the Missouri Pacific RAILROAD Company, hereinafter referred to as the carrier, maintains wrecker derrick MPX-155 and regularly assigned wrecking crew consisting of the members named above and hereinafter referred to as the claimants. All the claimants have work week of Monday through Friday, rest days Saturday and Sunday, hours 7:00 A.M. to 3:30 P.M., with the exception of Carman R. T. Meyer who has work week of Wednesday through Sunday, rest days Monday and Tuesday, hours 7:00 A.M. to 3:00 P.M.

On Saturday, July 15, 1967, wreck occurred east of Washington, Missouri, which is located approximately fifty (50) miles from St. Louis, Mis-

The foregoing award interpreted the same rules which are in dispute before your board in this docket. The facts are the same. The crew was aroused an hour before the time set to go to work each day for the week required to re-rail the cars. The time spent by the men in their personal pursuits preparing to go to work is not time on duty. It is part of the time the men are tied up not only for sleep but also for bathing and eating.

The wrecking outfit was moved each day from the siding at Washington, Missouri, to the scene of the derailment by a crew assigned to the work train to handle the wrecking outfit. Not only the members of the wrecking crew but the train and engine crew and the maintenance of way employes who were on hand to repair the track commenced work at 5:30 each morning and tied up at 9:00 P.M. The claimants were not on duty from 4:30 A.M. to 5:30 A.M. and there is no basis for the claim for the additional hour at the time and one-half rate.

For the reasons stated above, the claim is not supported by the agreement and should 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.

The six carmen named as Claimants are the regularly assigned members of the wrecking crew at Carrier's 21st Street Yard in St. Louis, Missouri.

On July 15, 1967, Train No. 73, while enroute from St. Louis to Jefferson City derailed. The wrecking crew was notified at 3:15 P.M. that date to report for wrecking service. The wrecker departed St. Louis at 4:15 P.M. and arrived at the derailment at 8:15 P.M. The crew worked continuously from the time of arrival until 9:30 P.M. July 16, when the wrecker tied up at Washington, Missouri, four miles west of the scene of the derailment. Knowing that several days would be required to pick up the derailed cars a work schedule was established for the next several days. Claimants were instructed to be ready to go on duty at 5:30 A.M. when the wrecker, along with a converted Pullman car which housed and provided meals for the crew, left the tie-up track at Washington for the scene of the derailment. The crew stopped work in time so that the wrecker outfit could be back at Washington and tie up at 9:00 P.M. This schedule was adhered to from July 17 through 21. On July 22 the crew left the tie up track at 5:30 A.M.; returned and tied up at 10:00 P.M. On July 23, the crew resumed work at 6:00 A.M.; departed Washington at 7:10 A.M. for St. Louis, its home station, and tied up at 5:25 P.M.

While tied up at Washington the cook aroused Claimants at 4:30 A.M. so they could prepare themselves, have breakfast and be ready to leave Washington at 5:30 A.M.; except on July 23 they were aroused at 5:00 A.M. to resume work at 6:00 A.M. The issue is whether Claimants have a contractual right to compensation for each hour immediately following the time they were aroused; otherwise stated, were those hours rest hours or working hours.

The wrecking crew was in wrecking service from the time it reported in response to call at its home station until it returned thereto and put its tools away; but, all hours in such service are not compensable. Rule 7 of the Agreement sets the compensation for such service and paragraph (b) thereof provides:

"If during the time on road a man is relieved for five (5) hours or more, such relief time will not be paid for"

There is no evidence of probative value in the record before us that during the hours involved Claimants were ordered or otherwise required to perform work.

In our Award No. 3831 involving the parties herein and the same agreement we were confronted with a like issue. We held the time spent in eating and personal preparation prior to the resumption of work at an assigned hour is not a period of work, but a part of the rest period. For reasons stated in that Award we will deny the instant Claim. See, also, Award No. 4184.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1970.