Award No. 6323
Docket No. 6083
2-BN-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

BURLINGTON NORTHERN, INC.
(Formerly Northern Pacific Railway Company)

DISPUTE: CLAIM OF EMPLOYES:

1. That the carrier violated the current agreement when it transported the carmen of the Auburn, Washington wrecking crew back to Auburn by highway vehicles on January 5, 1970, and when they were not permitted to accompany the wrecker outfits on their return to Auburn from a derailment at McMurray, Washington on January 8, 1970.

2. That accordingly, the carrier be orderedt o compensate the members of the aforementioned wrecking crew as follows:

	January	Hours Overtime	Hours Straight Time
D. E. Lowe, Wrecker Foreman	5	3½	—
	6	16	8
	7	16	8
	8	1	—
J. A. McCormick, Carman	5	5½	—
	6	16	—
	7	16	8
	8	1	8
W. V. Muller, Wrecker Engineer	5	5½	—
	6	16	8
	7	16	8
	8	1	—
Joe Lowe, Jr., Carman	5	5½	—
	6	16	8
	7	16	8
	8	1	—

	January	Hours Overtime	Hours Straight Time
M. W. Hanson, Leading Carman	5	3½	—
	6	16	8
	7	16	8
	8	1	—
D. N. Sample, Cat Operator	5	7	—
	6	16	8
	7	16	8
	8	1	—
S. H. Hoober, Cook	5	7	—
	6	16	8
	7	16	8
	8	1	—
H. L. Southerland, Carman	5	7	—
	6	16	8
	7	16	8
	8	1	—
R. V. Booth, Regular assigned wrecker member	5	7	—
	6	16	8
	7	16	8
	8	1	—

EMPLOYES' STATEMENT OF FACTS: The Burlington Northern, Inc. (formerly the Northern Pacific Railway Company) hereinafter referred to as the Carrier, maintains a wrecking outfit headquartered at Auburn, Washington. Wrecker Foreman D. E. Lowe; Wrecker Engineer W. V. Muller; Caterpillar Operator, D. N. Sample; Wrecker Cook S. H. Hoober; Leading Carman M. W. Hanson; Carmen J. S. McCormick; J. Lowe, Jr.; H. L. Southerland and R. V. Booth, hereinafter referred to as the claimants, are regularly employed at Carrier's Auburn, Washington Repair Yards.

A derailment occurred near McMurray, Washington. Wrecker outfits Nos. 37 and 42 and the claimants are headquartered at Auburn, Washington. Carrier ordered the two wrecker outfits from Auburn to McMurray on January 3, 1970, when a derailment had occurred, and the claimants accompanied the equipment by rail.

The claimants worked at the scene of the derailment on January 3, 4, and 5, 1970, during which time they cleared the main line except for six tank cars which were still derailed. These tank cars were loaded with liquid petroleum and because the derailment occurred in a swampy area the tank cars had to be pumped out before they could be rerailed.

The claimants were returned to their headquarters of Auburn on January 5, 1970 in four different highway vehicles and consequently they did not all arrive at their home station at the same time. This accounts for the fact that the compensation sought by the crew members for the date of January 5, 1970, is different in the number of hours claimed.

Both wrecker outfits were returned to Auburn by a freight train on January 8, 1970, arriving there at 1:00 A. M., thus being out fifty-six (56)

service was performed during the time claimants were back at their home station and there is therefore no basis for a sustaining award. It is merely intended to show that, even if wrecking service had been performed by others, there would be no basis for the duplicate payment claimed, and any possible recovery would be limited to "the difference between what they received and what they would have received had they accompanied the outfit." See Second Division Award 5492.

In the light of the argument and evidence set forth herein, the Carrier can only reiterate its opening contention that the claimants were properly compensated under applicable rules for service actually performed, and that there is no proper basis of support for the claim for unearned duplicate compensation as presented herein. Such claim should therefore 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.

On January 2, 1970, a derailment occurred near McMurray, Washington. Three tank cars of propane and three tank cars of butane were derailed. As a result of the accident three box cars loaded with sulpher caught fire.

Wrecker outfits Nos. 37 and 42 are headquartered at Auburn, Washington. The Claimants were sent to the scene of the accident the following day, January 3, 1970, to begin the work of rerailing the cars and clearing the main track.

Claimants worked at the scene of the derailment on January 3, 4 and 5, 1970, during which they cleared the main track except for the six tank cars which were still derailed.

Claimants were returned to their headquarters at Auburn by highway vehicles on January 5, 1970. The Claimants were returned to the scene of the accident on January 11, 1970, and worked there until January 16, 1970 when the work was completed and the Claimants accompanied the wreckers back to Auburn.

The Carrier states that the Claimants were returned to their headquarters because of the hazardous conditions which existed. Work was suspended until the gas could be pumped from the derailed cars and transferred to other tank cars.

The Employes contend that Carrier's failure to permit the Claimants to return to Auburn on January 8, 1970, is in violation of Rule 80 of the effective Agreement. Rule 80 reads:

> "Wrecking crews will be composed of regularly assigned carmen, and will be paid for such service in accordance with provisions of Rule 12.

When called for wrecks or derailments outside of yard limits, a sufficient number of regularly assigned crew will accompany the outfit; for wrecks or derailments within yard limits sufficient number of carmen will be furnished to perform the work.

Where needed, men of any class may be taken to assist members of the wrecking crew."

They further contend the Claimants were entitled to be paid under the provisions of Rule 12 as set forth in Rule 80.

It is obvious from the record that no wrecking service was performed on the dates in question. We further find that the Claimants worked their regular jobs on the specific dates and suffered no loss of earnings. We find no rule violation in the instant case.

Rule 80 does not prohibit Carrier's action or does it require that the crew stay with the equipment when it is standing idle and not being used to perform wrecking service.

Second Division N.R.A.B. Award 5545 involved a similar factual situation. Award 5545 states:

"A close examination of Rule 22(c) discloses that Carrier is not prohibited from returning wrecking service employes to their home station prior to completion of the work of cleaning up the wreck, or that the Carrier is prohibited from releasing wrecking service employes for more than 8 hours without the crew accompanying the wrecking equipment to its home base."

We will deny the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1972.

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