Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6970
SECOND DIVISION Docket No. 6716
2-T&P-CM-'75

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: ( System Federation No. 121 Railway Employes' Department, A.F.L. - C.I.O. - Carmen
( The Texas and Pacific Railway Company

Dispute: Claim of Employes:

1. That the Carrier violated the controlling Agreement when they improperly compensated Carman R. A. Martin and Carman Helper R. C. Ledford for services performed on August 31, 1973.

2. That accordingly, the Carrier be ordered to additionally compensate Carman R. A. Martin and Carman Helper R. C. Ledford the difference between their respective time and one-half rate of pay and the double time rate of pay for four and one-half (4 1/2) hours each.

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.

Claimants R. A. Martin and R. C. Ledford are, respectively, a Carman and Carman Helper employed in Carrier's Mechanical Department at Fort Worth, Texas. Claimants hold regularly assigned positions on the first shift, repair track, with hours of service 7:30 A.M. to 4:00 P.M., with lunch period 12:00 to 12:30 P.M. On August 31, 1973 Claimants at about 10:00 a.m. were instructed by supervisor to proceed to Lawrence, Texas, a distance of some 64 miles to change out a pair of wheels on MPX-70026, a hopper car filled with sand. Upon arrival, Claimants jacked the car and rolled the truck out from under to change one pair of wheels. During their lunch break, at about 12:30 p.m. the ground under the jack on the north side of the car gave way and the car fell off the jack. Claimants thereupon notified their supervisor at Fort Worth who dispatched a Cline road truck to Lawrence with two additional Carmen. The truck arrived at about 8:00 p.m. and these men proceeded under instructions

from Fort Worth to keep working until all of the work was completed. After rejacking the hopper car and changing out the defective wheels, the trucks were replaced under the car and the entire job was completed at approximately 5:00 a.m. September 1, 1973.

For the work described supra, the Claimants were paid eight hours at the straight time rate representing their regular assigned hours at home station and time and one-half for the next 12 hours and 30 minutes of service. Claimants assert that for the last 4 hours and 30 minutes for time beyond 16 hours computed from the start of their regular assignment they should have received double time under Rules 3 and 6 (a) governing Overtime and Emergency Service, Road Work. Thus the instant claim seeks reimbursement for the difference between time and one-half and double time for the last four hours and 30 minutes worked.

Carrier resists the claim on the grounds that the applicable Rules for payment purposes in this case are not 3 and 6 (a) but the "Wrecking service pay rule" set forth in 6 (e) of the controlling Agreement. Carrier reaches this position by reasoning that the work for which Claimants originally were called out was emergency road work but that work metamorphized into wrecking service work at the moment when the hopper car fell off the jacks at 12:30 p.m. on August 31, 1973. Thus, Carrier argues that Claimants were paid properly at the time and one-half rate for the last four hours and 30 minutes because the nature of the work performed during that time was wrecking service work and not emergency repair work. As authority for this position Carrier cites Awards 4563, and 6472 inter alia and seeks a denial award.

The narrow issue presented by this case is whether the status of Claimants for pay purposes automatically changed at the moment the hopper car fell off the jacks at 12:30 p.m. on August 31, 1973. We have considered carefully the Agreement language and the record evidence. Our analysis of the many Awards cited by Carrier leads to a conclusion that none of them is determinative of this case as each may be distinguished on the facts and issues from the present case. Cited Awards 4563, 6257, 6322, 6602 and 6757 all deal with derailment and rerailing by non-Carmen employees or by forces of outside contractors. Award 6472 deals with sand-blasting paint and Award 6672 turns on an interpretation of seniority districts so that neither is relevant whatsoever to the instant dispute. The only cited case which is close to ours is Award 6677 and that may be distinguished on the basis that Claimants therein were specifically assigned to augment a wrecking crew already on the scene of a derailment. The instant case presents a fact pattern directly opposite to that in the earlier Award.

We are not persuaded that a metamorphosis occurred in Claimants' status for pay purposes when the hopper car slipped off the jack. The employees had been dispatched to perform emergency road service and, notwithstanding the intervening and unanticipated slipping of the car off the jack they completed the repair work to the hopper car by changing out the faulty wheels and returning the car to its truck. In the particular facts and circumstances of this case

we are persuaded that the work performed by Claimants during the 4 hours and 30 minutes culminating at 5:00 a.m. September 1, 1973 was emergency road repair service. As such Claimants should have been paid double time for the work performed. We shall sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of December, 1975.