Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7416
Docket No. 7320
2-SOU CM-'77

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute:

(System Federation No. 21, Railway Employes'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Southern Railway Company

Dispute: Claim of Employes:

1. That under the controlling Agreement the Danville, Kentucky wrecking crew members were improperly relieved from duty and were denied duty and/or compensation for a portion of their regularly assigned hours while in wrecking service July 6-8, 1975 at Sunbright, Tennessee and July 28-31, 1975 at Milepost 317.1 near Soddy, Tennessee.

2. That accordingly the Carrier be ordered to compensate members of the Danville, Kentucky wrecking crew for the portion of their regularly assigned hours denied them while improperly relieved as follows:

C. E. Westerfield	15½ hours	- straight time
W. F. Cooper	4½ hours	- straight time
P. E. Rigsby	11 hours	- straight time
M. C. Hall	1½ hours	- straight time
M. D. Selby	1½ hours	- straight time

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.

The instant case involves the payment of employees while in wrecking service.

Rule 9 (Road Work-Overtime) of the Consolidated Agreement effective March 1, 1975, reads in pertinent part:

"Wrecking service employees will be paid in accordance with Agreement dated December 11, 1974 reproduced beginning on page 89 of this Agreement."

The new wrecking service Agreement provides in pertinent part:

"WHEREAS practices vary at the respective points on Carriers parties hereto in the treatment of wrecking service employees; and

"WHEREAS it is desired that there be one Agreement with respect to treatment of wrecking service employees uniformly interpreted and applied on Carriers parties hereto. (Underscoring added)

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(2)(a) If wrecking service employees are relieved while away from home station 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 they be paid for a total of less than eight (8) hours each calendar day, during which such irregular service prevents the employees from making their regular daily hours at home station. The time on duty of employees so relieved when away from home station shall, except as provided in paragraph (c) of this Section (2), terminate upon their arrival at the place of lodging provided by the company.

(b) At the expiration of the relief time provided for in paragraph (a) above, time on duty for wrecking crew members shall start from the time called to continue performance of wrecking service and such employees shall be paid accordingly from the time called as provided in Section (1) hereof."

Rule 156(c) of the controlling consolidated Agreement effective March 1, 1975, reads:

"(c) This Agreement and the implementing agreement of the same date contain all the rules governing rates of pay and working conditions applicable to the employees represented by the organizations party hereto. Any practice of agreements not in conformance or contained herein are hereby abrogated." (Underscoring added)

Claimants base their claim in the instant dispute on the contentions (1) that the practice of paying the Danville, Kentucky wrecking service employees eight (8) hours for each day they were away during their regular first or second shift working hours at home station, regardless of whether they were on duty or relieved from duty for five or more hours of rest in bed, was supported by the second paragraph of former Rule 10 and other rules of the former Agreement of March 1, 1926; and (2) that the new Wrecking Service Agreement dated December 11, 1974, did not nullify or change the former practice and method of payment to Claimants.

However, we find that Carrier is not required to pay Claimants under previously existing past practices allegedly sanctioned by former Rule 10.

The old Rule 10 expired on the effective date of the new Wrecking Service Agreement, and Claimants were properly paid pursuant to the presently existing Rule 2(a). We must emphasize to Claimants that different past practices do not supercede a presently existing rule. Therefore, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of December, 1977.