Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7787
Docket No. 7704
2-L&N-CM-'79

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employes' Department, A. F. of L. - C. I O. (Carmen)

(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

(1) That the Carrier violated the terms of the Agreement when the Etowah, Tennessee Wrecking Crew Members B. R. Crofts, D. R. Curtis, T. L. Edwards and C. E. Moses were relieved of their wrecking assignment by being taxi cabed to Etowah from the wrecking outfit, arriving at 6:00 A.M., September 13, 1976, and the remainder of the Etowah Wrecking Crew, C. E. Schreck and T. E. King, returned to Etowah with the Wrecking outfit, arriving at 4:00 P.M. and were relieved at 5:30 P.M., September 13, 1976, and

(2) Accordingly, the Carrier be ordered to additionally compensate Wrecking Crew Members B. R. Crofts, D. R. Curtis, T. L. Edwards and C. E. Moses, the same compensation received by Wrecking Crew Members C. E. Schreck and T. E. King, or 3 hours and 30 minutes each, at time and one-half rate of pay.

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 situation giving rise to this dispute is as follows: Claimants were called for a derailment outside yard limits. After the wrecking assignment was completed, Claimants (members of the wrecking crew) were not permitted to accompany the wrecking outfit to home station but were returned to home station by taxicab. They were released at home station at 6:00 a.m. The wrecking outfit with two other crew members arrived at the home station and were relieved from duty at 5:30 p.m. on the same date. The claim is for the amount lost as a result of not being permitted to accompany the outfit to home station; i.e., 3 hours and 30 minutes at time and one-half.

The Employees rely primarily on Rule 108 of the Agreement, captioned "Wrecking Service - Use of Regular Crew", the first sentence of which reads:

> "For wrecks or derailments outside of yard limits, the regular assigned crew will accompany the wrecking outfit."

Carrier, in denying the claim, construes Rule 108 as meaning that "the assigned crew will accompany the wrecker outfit to a wreck or derailment outside of yard limits, but after the wreck or derailment has been cleared the rule is silent on the return trip, since the wreck or derailment emergency is over."

Carrier also argues that the Rule "does not require wrecker crew members to remain with the wrecker after the derailment has been cleared and the wrecker is no longer needed.... It would be unreasonable to hold employees on duty when their services are not needed."

This issue involving the same parties, has been before this Board at least three times. In each case this Board sustained the claims for the time the wrecking outfit left the home point until the outfit was returned to the home point. See Second Division Awards 3259, 3936, and 4666. See also Second Division Award 5784 on a like dispute on another railroad.

Precedent Awards, particularly between the same parties, should be followed unless found clearly erroneous. Given affirmative decisions in previous Awards involving the same parties, we must consider the issue presented in the instant case to be a settled question, at least on this property. Any other standard would lead to chaos. See Second Division Awards 2621, 3991, 5217, 6109 and 6548, and Fourth Division Award 3443.

Carrier alleges that interpretation was placed on a like rule by the United States Railroad Administration in 1920. Carrier also cites Second Division Award 6332 (Williams).

With respect to the 1920 interpretation, it should be pointed out that Rule 108 was negotiated long after that date and that Rule 108 has been interpreted at least three times by this Board in favor of the Employees' position (Awards 3259, 3936, and 4666).

The language of the Rule involved in Award 6332, cited by Carrier, as well as in the interpretation issued in 1920, differs from the language of the relevant rule in the case before us. The rule in the cases cited by Carrier reads: "When wrecking crews are called for wrecks...." (underlining added). Rule 108 of the applicable Agreement in the instant case reads, as quoted earlier: "For wrecks or derailments...." (underlining added). Thus, the cases cited by Carrier are not applicable, since they deal with different language and different factual situations. Precedent Awards on this property support the Employees' position.

Carrier further alleges that Rules 107 and 11 were not cited on the property and must be disregarded by the Board. That allegation does not stand. Rule 108 was violated. Rules 107 and 11 were cited to support the amount of damages claimed. Furthermore, the Agreement is always before the parties. It is well recognized that the meaning and intent of the parties must be gleaned from the entire Agreement, that the Agreement must be read as a whole, and that we may look to other Rules in the applicable Agreement as they may bear upon and give meaning to Rules cited by the parties in their discussions on the property and in their submissions to this Board.

For all of the above reasons, we must conclude that the claim should be granted.

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 4th day of January, 1979.

CARRIER MEMBERS' DISSENT
TO
AWARD NO. 7787, DOCKET NO. 7704
(Referee Weiss)

It was stated in the Findings in Award 7787:

"Carrier alleges that interpretation was placed on a like rule by the United States Railroad Administration in 1920. Carrier also cites Second Division Award 6332 (Williams).

"With respect to the 1920 interpretation, it should be pointed out that Rule 108 was negotiated long after that date and that Rule 108 has been interpreted at least three times by this Board in favor of the Employees' position (Awards 3259, 3936, and 4666).

"...Thus, the cases cited by Carrier are not applicable since they deal with different language and different factual situations. Precedent Awards on this property support the Employees' position."

The majority failed to grasp the issue involved in the case to be decided. Carrier had called the Board's attention to the fact that Awards 3259, 3936 and 4666 covered an entirely different issue. In each of those cases the issue was whether Rule 108 entitled the assigned wrecker crew to accompany the wrecking outfit (or some of the equipment from the wrecking outfit) to which it was assigned when such equipment was used on territory usually protected by a wrecking outfit and assigned wrecking crew from another station. Claims were sustained in behalf of the assigned wrecker crew; however, in its Award 3936, the Board specifically excluded the time the wrecker was delayed in returning to its yard after the derailment emergency was over.

In the case before the Board in Award 7787 the assigned wrecker crew was used; the issue in question was whether carrier was required to

compensate the claimants for the time between their arrival at home station and the time the wrecking outfit itself arrived in its yard.

Carrier Members are at a loss to understand how the majority concluded that the 1920 interpretation and Second Division Award 6332 should be rejected. The issue involved and the agreement provisions were identical to the case in Award 7787. The only variance in the issue was the mode of transportation for the claimants - in the 1920 interpretation, they were transported to home station by passenger train, in Award 6332 by automobile, and in Award 7787 by taxi. Rule 108 before the Board in Award 7787 reads:

> "For wrecks or derailments outside yard limits, the regular assigned crew will accompany the wrecking outfit."

Rule 158 involved in the 1920 interpretation, and Rule 113 before the Board in Award 6332 are identical. Both read:

> "When wrecking crews are called for wrecks or derailments outside of yard limits, the regular assigned crew will accompany the outfit."

The Majority erred when it concluded that different sentence construction constituted different language. If the rules were written in the same sentence construction, they would read:

> L&N Rule 108 (Award 7787): The regular assigned crew will accompany the wrecking outfit for wrecks or derailments outside yard limits.
>
> Boston & Main Rule 113 (Award 6332) and Rule 158 involved in the 1920 interpretation: The regular assigned crew will accompany the outfit when wrecking crews are called for wrecks or derailments outside of yard limits.

The latter rule does not give carriers the option of calling the regular assigned crew when the wrecking outfit is called; they have the option of calling the wrecking outfit, as does the L&N.

In Award 6332, the referee stated in the findings that, although the carrier did not have the option of calling the regular assigned crew to accompany the wrecker to the wreck or derailment, it did have the option of relieving them after completing the assignment for which called. The Board held:

> "Rule 113 does not provide for crews to accompany an outfit on a return trip. The Board does not have the authority to add to, alter or modify a contract."

In the 1920 interpretation, it was held:

> "It was not the intent of this rule to prohibit sending wrecking crew to home station by passenger train in advance of the wrecking outfit."

In reaching its conclusion to sustain the claim before the Board in Docket No. 7704, the majority felt no restraint in its authority to add to contract provisions. After Federal control ended in 1920, carmen on this property had no rule which required carrier to assign them to wrecking crews. A rule was negotiated effective June 1, 1942 to provide that carmen would be assigned to wrecking crews and that the assigned wrecking crew will accompany the wrecking outfit for wrecks and derailments outside yard limits. The rule negotiated at that time has never been revised and appears today as Rule 108. If it was the intent of the parties to prohibit sending the assigned crew to home station in advance

of the wrecking outfit after the emergency was over, such language was not included in the rule. The passage of time did not make the 1920 interpretation any less sound.

While the crew involved in the case before the Board on which Award 7787 was rendered returned to home station by taxi only three hours and 30 minutes before the wrecking outfit, there are many instances where the wrecking outfit and assigned crew work continuously for many days to clear a main line derailment. After the derailment is cleared and the main line is open, because of the slow speed at which the wrecking outfit is capable of traveling, the wrecking outfit is oftentimes placed in a nearby siding for the time necessary to permit movement of trains that were held at each side of the derailment due to the blockage. Sometimes, due to the length of the blockage, it may take 48 hours to clear up congestion caused by the derailment.

There is no agreement rule which requires carrier to leave the crew members, who have regular assignments at the home station to protect, with the wrecking outfit and pay them continuously for exorbitant hours when there is no further wrecking service to be performed. Even Rule 11, which governs how employees will be paid for emergency road work, including wrecking service, permits carrier to relieve employees for rest without pay while they are engaged in such service, so long as they are paid at least eight hours for each calendar day. The new rule the Majority has attempted to write for wrecking crews after completing emergency work would require carrier to pay such employees continuously for 24 hours per calendar day for resting.

The railroad industry has spent vast sums of money to escape from "featherbedding" rules and work practices such as this; and in rendering this erroneous award, the Majority has attempted to write a new featherbedding rule for wrecking crews.

There are no precedent awards on this issue on this property. Award 7787 does not address itself to the issue involved, and Carrier Members vigorously dissent. The issue remains in dispute.

G. H. Vernon

J. W. Gohmann

J. E. Mason

B. K. Tucker

P. V. Varga