

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

Parties to Dispute: { System Federation No. 42, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling Agreement by their failure to pay the Hamlet, N. C. wrecker crew from the time they were placed on duty on October 19 and 21, 1976, and December 7, 1976.
2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to pay Carmen Harry Wheeler and W. A. Lewis one (1) hour at straight time rate, and one (1) hour at overtime rate; J. M. Mercer and R. W. Bishop, three (3) hours at straight time rate; and H. P. Pence and L. N. Meacham, two (2) hours straight time rate; and B. C. Lambert one (1) hour straight time and fifteen (15) minutes overtime rate; and H. T. Phifer one (1) hour at straight time Carmen's rate.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

We are called upon to apply the following rules to the two situations described hereunder:

Rule 5

"(e) Employees will be allowed time and one-half on minute basis for services performed continuously in advance of the regular working period with a minimum of one (1) hour, the advance period to be not more than one (1) hour."

Rule 8

"(a) An employee regularly assigned at a shop, engine house, repair track, or inspection point, when called for emergency road service away from such shop, engine house, repair track, or inspection point, will be paid from the time called to leave home station, until his return for all service rendered in accordance with the practice at home station, and will be paid straight time rate for straight time hours and overtime rates for overtime hours for all time waiting or traveling.

(b) If during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employee from making his regular daily hours at home station. When meals and lodging are not provided by railroad actual necessary expenses will be allowed. When an employee is required to go to shops for tools or material before leaving home station he will be paid for the time necessary to cover such service.

(c) Wrecking service employees will be paid in accordance with this rule."

Situation No. 1. At 4:50 A.M., Monday, October 18, 1976, a wrecker crew was placed on duty and proceeded from Hamlet, N.C. to a derailment at Wise, N.C., about 125 miles away. The wrecker and cars were tied up that same day at Norlina, N.C., some three miles distant, for rest.

Claimants' assigned hours at Hamlet were 7:30 A.M. to 3:30 P.M.

At 7:20 A.M. on Tuesday, October 19, 1976, the wrecker proceeded from Norlina to Wise. On Thursday, October 21, 1976, the wrecker left Norlina at 7:15 A.M. On both days, the wrecker crew was not officially placed on duty until 7:30 A.M.

Claims were filed for 10 and 15 minutes, respectively, at the overtime rate, for those wreck crew members for whom the days involved were rest days, and one hour at straight time for those claimants regularly assigned to work on those days. The claims rely on Rule 5(e) on the ground that it involved work "performed continuously in advance of the regular working period".

Situation No. 2. On Monday, December 6, 1976, the Hamlet wrecker and crew were sent to a derailment at Rose Hill, N.C., some 100 miles distant. The crew was given a rest period that night.

On Tuesday, December 7, the train crew started switching the wrecker train at 6:40 A.M. and completed switching at 6:55 P.M. The wrecker crew was placed on duty at 7:30 A.M.

Claims were filed for 50 minutes at the overtime rate for those claimants for whom Tuesday was a rest day and one hour at straight time for the others.

The Organization's position is that Rule 8(a) states that wrecking service employees will be paid from the time called to leave home station, until they return, for all service rendered in accordance with the home station practice, for all time waiting or traveling. The claim is that while the crew was paid for travel time from Wise to Norlina, it was not paid for traveling from Norlina to Wise after the rest period.

Petitioner considers the dispute as one involving a matter of principle, inasmuch as the distance between Norlina and Wise was only 3 miles. But it construes Rule 8 as providing payment to wrecker crews for all time waiting or traveling; the crew did travel from Norlina to Wise; hence, it should have been paid for such time.

Petitioner also asserts that the wrecker crew's rest ended when the train crew started switching and that the wrecker crew was on waiting time from that time on until the work of picking up the derailment actually began. Accordingly, it holds that the claim does not rest on Rule 8(b), since the rest period was over when the train crew moved the wrecker from its place of rest at Norlina to Wise.

Carrier's position is that Rule 5(e) refers to "services performed continuously in advance of the regular working period but that no services were performed by the wrecker crew during the time the wrecker was being switched from Norlina to Wise, before the crew's regular 7:30 A.M. starting time.

Carrier also argues that Rule 8 merely provides pay for time waiting or traveling from time called to leave home station until arrival at scene of derailment and return, and that switching of a wrecker train at a derailment site is not travel within the meaning of Rule 8.

Moreover, Carrier insists that the Agreement does not prohibit moving wrecking equipment at scene of derailment nor does it provide that the crew is to be placed on duty if moved during their rest period.

Carrier also challenges Petitioner's assertion that because the crew was paid while traveling from Wise to Norlina, because the track at Wise could not satisfactorily accommodate the wrecker, payment should also apply to the reverse movement. The reason, according to Carrier, is that the crew was relieved from duty under the provisions of Rule 8(b); was not under pay; and did not go on duty until 7:30 A.M. In brief, Carrier insists the men were on their rest period when the wrecker started for Wise.

Carrier contends Second Division Award 1461 is applicable. In that case, a wrecker and crew were sent to a derailment, worked for some time, and then were released for rest in the bunk cars of the wrecking outfit. During the crew's rest period, the bunk cars were moved a distance of 6.2 miles because of track conditions and then moved back to the derailment scene. The claim was made that the switching movement was traveling and waiting time within the meaning of a Rule 9(e), a rule virtually identical to Rule 8(a) cited supra, except that the rule involved in Award 1461 used the terms "work" and "time worked", whereas Rule 8(a) uses the terms "service" and "service rendered". Carrier in that case contended that the controlling agreement provision was Rule 9(b) which is in all materials respects similar to Rule 8(b) quoted supra.

The Board in Award 1461 stated:

"The record shows that claimants were released for rest from 1:20 A.M. to 7:00 A.M., a period of five hours and forty minutes. That they occupied the bunk cars during this period is not disputed by the record. The traveling time covered by Rule 9(e) is that period of time occupied in going to the scene of the wreck from the employees' home station and the period of time used in returning to home station from the scene of the wreck upon the completion of the work. The mere fact that conditions required that the bunk cars be moved while occupied by claimants during a rest period does not bring them within Rule 9(e). The facts meet all the requirements of Rule 9(b). The five hours and forty minutes here involved is a relief period within the purview of Rule 9(b) and for which compensation does not accrue under the plain provisions of that rule. The interpretation sought by the claimants is a strained one that is not within the contemplation of the rule."

Petitioner seeks to distinguish the fact situation covered in Award 1461 from the instant case by pointing out that in Award 1461 there was no dispute that members of the wrecker crew were on their rest period during the time their car was being switched. In the case before us, however, Petitioner denies that claimants were on their rest period; insists that the switching and movement of the train in effect ended the rest period and marked the start of waiting or travel time for which compensation is due under Rule 8(a).

Notwithstanding Petitioner's contention, we are of the opinion that the ruling in Award 1461 is applicable to the present case. The facts and rules cited therein are, in general, identical with the instant case. We agree with the conclusion reached in that case and, accordingly, will deny the claim.

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Award No. 7957
Docket No. 7805
2-SCL-CM-'79

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 13th day of June, 1979.