

The Second Division consisted of the regular members and in addition Referee George E. Larney 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 compensate Messrs. George McDonald, W. H. Snelson, Larry D. Chapman, and W. Harvey Ingram, members of the Manchester, Georgia wrecker crew, twelve (12) and one-half (1/2) hours at overtime rate when they were required to remain on duty from 6:30 p.m. December 22nd to 7:00 a.m. December 23rd, 1975.
2. That the Seaboard Coast Line Railroad be ordered to compensate the members of the Manchester, Georgia wrecker crew twelve (12) and one-half (1/2) hours at overtime 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 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.

Four (4) Claimants allege Carrier violated Rules 1, 5, 8 and 103 of the Controlling Collective Bargaining Agreement dated January 1, 1968, when Carrier required the Claimants to remain on duty from 6:30 PM, December 22, 1975 to 7:00 AM, December 23, 1975 without payment for their services during the twelve (12) and one-half (1/2) hours in question.

On December 18, 1975, a major derailment occurred at Harlson, Georgia involving four (4) cars which had overturned. The wreck crew stationed at Manchester, Georgia, located approximately thirty (30) miles from Harlson, was immediately dispatched for the purpose of performing emergency road service. After clearing the main line, the wreck crew returned to Manchester at about 10:30 PM, December 18, 1975. On December 22, 1975, the

wreck crew returned to Harlson to pick up and reraill the four (4) cars involved in the derailment of December 18, 1975. The wreck crew worked until 6:30 PM on December 22, 1975 and was informed that work would resume at 7:00 AM the following day, December 23, 1975. The train crew operating the wreck train was returned to Manchester on December 22, 1975 to spend the night, while the Carman wreck crew was directed by the Carrier's foreman to remain with the wrecker at Harlson. This directive was issued by the foreman in response to a request by one of the Claimants that he be allowed to return to Manchester for some part of the evening for the purpose of conducting business related to a side-line occupation. Allegedly, the foreman told the Claimant that if he left, not to come back that night, the next day, or any time and that this was applicable to the others on the wreck crew as well. As a result, all of the members of the Carman wreck crew remained with the wrecker the night of December 22, 1975.

The Organization takes the position that because the Claimants were ordered specifically to stay with the wrecker they therefore were not relieved from duty at 6:30 PM, December 22, 1975. As such, the Organization asserts, the Carrier in requiring the Claimants to remain at Harlson, utilized the services of the Claimants between the hours of 6:30 PM, December 22, 1975 and 7:00 AM, December 23, 1975 for which time the Claimants should be paid at the overtime rate of time and one-half.

The Organization further maintains that in addition to the several Rules violations committed by the Carrier in the instant case, the Carrier also acted contrarily to an advisory it subsequently issued via a letter dated April 10, 1976 in which the Carrier's Assistant Vice President for Personnel and Labor Relations stated in relevant part:

"When employees are relieved from duty for rest as provided for in Rule 8, it is not our intent to require them to perform any duties during the rest period without pay. However, we must insist that employees so released who elect not to remain with the wrecker derrick outfit must report promptly for service at the required time as instructed following such rest period."

The Carrier takes the position it has not violated any of the Rules cited by the Organization. Carrier maintains that it was proper and in keeping with Rule 8 to require the wreck crew to remain with the wrecker without compensation as sought in this dispute. Carrier insists that the Organization has not cited any instance where employees have been paid in the manner it now seeks in the instant case. Furthermore, Carrier believes the Organization, in appealing the instant claim before the Adjustment Board is attempting to change the Controlling Agreement through interpretation.

In closely scrutinizing the record, the Board finds the Carrier did, in fact, relieve the four (4) Claimants from duty at 6:30 PM on date of December 22, 1975 even though it required the Claimants to remain the night at Harlson, Georgia. We can find nothing in the provisions of the Controlling Agreement which prohibits the Carrier from asserting its authority as to the geographic location where employees will take their rest periods while performing emergency road service. Several factors account for Carrier's implicit right to dictate the place of rest, among which are the following: (1) employees availability upon resumption of work; (2) assurance that employees will have taken sufficient rest; and (3) various safety considerations as they relate to factors (1) and (2).

Although Carrier did not violate any of the provisions so cited by the Organization, we believe from a review of the record that the decision to keep the wreck crew at Harlson, while permitting the train crew to return to Manchester the evening of December 22, 1975 appears to have been somewhat discriminatory. Furthermore, said decision appears arbitrary when considering the fairly close geographic proximity of Harlson to Manchester and the fact that the Claimants could easily have traveled between the two locations in the twelve (12) and one-half ($\frac{1}{2}$) hours interim period and still have managed to receive sufficient rest and been reasonably available to work.

Although denying the claim, we feel that Carrier's position cited above in its letter dated April 10, 1976 makes for good labor relations and we trust that such a policy stance will be followed accordingly in such future circumstances as that encompassed in the instant case.

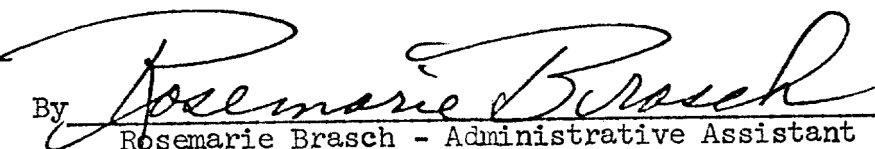
A W A R D

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 11th day of July, 1979.