

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United
(States and Canada
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(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, the regularly assigned members of the McComb, Mississippi wrecking crew were entitled to paid relief time from 3 A.M. to 7 A.M. on August 29, 1978.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to compensate R. E. Boyd, L. H. Toney, R. W. Kennedy, D. B. Wacker, R. T. Boyd, and J. Bowman each in the amount of four (4) hours at the applicable 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.

Claimants in this dispute, members of the McComb wrecking crew, were called to accompany the wrecking outfit commencing at 6 p.m., August 28, 1978. They arrived at the scene of the wreck on August 29, 1978 at 3 a.m. They did not begin wrecking operations until approximately 8 a.m.

Claimants' regularly assigned hours are from 7 a.m. to 12 noon and from 12:30 p.m. to 3:30 p.m. The Carrier did not pay the crew from 3 a.m. until 7 a.m., then resumed payment at straight time beginning at 7 a.m. The Organization claims that the crew should have been paid for the hours from 3 a.m. to 7 a.m. under the provisions of Rule 12, which reads in part as follows:

"EMERGENCY SERVICE-ROAD WORK

RULE 12. Employees sent out on the line of road to fill vacancies or for any other emergency shall be allowed time from the designated reporting time, until they return to a designated place, as follows: time and one-half during shop overtime hours and straight time during shop

"straight time hours, while working; straight time will be allowed for all time engaged in waiting for trains or travelling, except wrecking crews only, who will be allowed time and one-half while waiting for trains or traveling, in other than regular bulletined shop hours, and if during their hours on the road away from home station there should be an opportunity to go to bed for five hours or more, such time as men are relieved from actual service will not be paid for ..."

The Carrier argues that this time should not be paid for, since the rule provides for such non-payment where the employees have "an opportunity to go to bed for five hours or more". Further, the Carrier argues in its submission to the Board that payment for the hour between 7 a.m. and 8 a.m., prior to start of actual work, was in error.

As to the latter point, the Organization points out that this contention as to alleged overpayment was not raised on the property and therefore should not be considered by the Board. A search of the record sustains the Organization on this point. It is, however, not of decisive importance, since the issue before the Board is the treatment of time spent between arrival at the scene and actual commencement of work.

There is no dispute as to the facts in this matter, and the Rule does not present a question of ambiguity to the Board. Holdings in previous awards offer impressive guidance, and both the Carrier and the Organization offered numerous such awards for the Board's consideration. To make the resolution here as specific as possible, it is not necessary to refer to the series of awards dealing with time spent by crews after the completion of wrecking assignments and subsequent return to home stations. The issue here is the treatment of time between arrival and the commencement of work. Does this constitute time "waiting for trains or traveling, in other than regular bulletined shop hours" (as contended by the Organization) or relieved time of five or more hours (as argued by the Carrier)?

Although Award No. 6972 (Twomey) and Award No. 8434 (Roukis) do not quote the precise rules involved, the reasoning is applicable herein.

In Award No. 6972, a derrick crew completed one derailment service and then was sent to another derailment, and waited six hours prior to commencing service on the second derailment. The Award states in part:

"The issue before this Board is whether or not the six-hour period that Claimants spent at the Charlotte motel as directed by the Carrier, 11:30 p.m., May 5 to 5:30 a.m., May 6, constituted 'time working, waiting or traveling' to be paid for under Rule 10 as contended by Claimants, or constituted 'relief time not paid for' under Rule 10, as contended by the Carrier.

"We find that the six hour period in question was "waiting" time. The facts of record show that the Claimants had completed all wrecking service duties at Charlotte. There is no showing in the record that the crew was in need of rest. They had performed just five and one-half hours of total service, including travel time, at the time the Carrier required the six-hour rest period in Charlotte. We conclude that the Crew was held in Charlotte for the convenience of the Carrier in connection with the impending work at Belmont, N.C., rather than for a bona fide rest period. We shall sustain the claim."

Similarly, in Award No. 8434, the crew arrived at 10 p.m. and was assigned to start work at 6 a.m. (two crew members) and 7 a.m. The Awards states in part:

We agree with Carrier that Rule 8 does not specify that a person can be relieved on the road only after he has commenced work at a derailment or emergency situs, but we cannot disregard our definable holdings on analogous type of questions. Admittedly, Carrier would have used this crew had the main line not been cleared. They were sent to the derailment location to perform prompt emergency services. A relief or rest break pursuant to Rule 8 (b) would have been initially unlikely. In Second Division Award 6133 we held:

'that the purpose of the relief provide is to provide a minimum rest period whereby proper rest could be secured to fit them for the continuation of the tasks to which they are assigned.'

In this instance, Claimants were not assigned to perform tasks at 10:00 p.m. or were provided relief within actual working periods. They were in effect waiting for an assignment that did not materialize until 6:00 a.m. and 7:00 a.m. respectively and as such, entitled them to overtime for all time waiting consistent with Rule 8 (a). We will sustain the claim."

In the dispute now before the Board, the crew arrived at 3 a.m., prepared to start its emergency work. Consistent with previous awards as quoted above, the Board finds that the period from 3 a.m. to 7 a.m. or 8 a.m. falls outside the definition of relief time in Rule 12. The rule is specific in that there are occasions when wrecking crews are paid even if not actively at work, and these particular circumstances call for such payment.

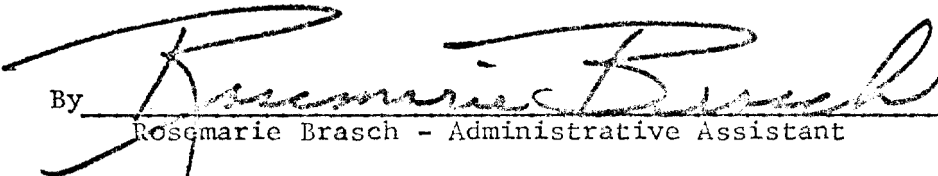
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of November, 1980.