

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

Dispute: Claim of Employees:

1. That the Maine Central Railroad Company (hereinafter referred to as the Carrier) violated the provisions of the current Agreement, namely Rules 4 (f) and 7 Paragraphs (a) through (g) thereof, when the regularly assigned members of the Waterville Relief train crew were instructed to wait for five hours in the riding car and later were refused compensation for same.
2. That accordingly, the Carrier be ordered to additionally compensate the following named Carmen: E. O. Dickey, C. A. Hammonds, E. J. King, Jr., E. J. Lalierte, and A. W. Sears, Jr., (hereinafter referred to as the Claimants) one (1) hour at the time and one-half rate and four (4) hours at the double time rate for hours of service between 12 midnight on November 14, and 5 A.M. on November 15, 1981 and the difference between time and one-half and the double time rate of pay for all work performed from 7 A.M. and 8:40 P.M. on November 15, 1981.

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 employes 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 are part of the Waterville (Maine) Relief Train Crew. On November 14-15, 1981, the Claimants were working at a derailment site at South Gardiner, Maine; the crew was working with the Hulcher Emergency Service of Gettysburg, Pennsylvania. At about midnight on November 14, the Hulcher crew was released for rest and went to a nearby motel. The Claimants rested at the derailment site in outfit cars between 12 midnight and 5 a.m.; the crew was back at work by 6 a.m. on November 15.

The Organization filed a claim on Claimants' behalf, seeking one hour's pay at the time and one-half rate and four hours' pay at the double time rate for work performed between 11 a.m. and 7 a.m. on November 14-15, 1981; the Claimants also seek the difference between time and one-half and double time pay for work performed between 7 a.m. and 8:40 p.m. on November 14-15, 1981.

The Organization contends that the Carrier violated Rules 4 and 7 of the controlling agreement when it denied to the Claimants the time and one-half and double time rate of pay for their work on November 14-15, 1981. Rule 4(f) provides:

"Except as otherwise provided for in this rule all service performed beyond sixteen (16) hours of service in any twenty-four (24) hour period computed from the starting time of the employee's regular shift, shall be paid for at the rate of double time; except that double time will continue for employees in wrecking service until released from the wrecking service work."

Rule 7 provides:

"(a) Employees regularly assigned to work at shop, engine house, repair track or inspection point, when called for emergency road service or work away from such shop, engine house, repair track or inspection point, will be paid from the time ordered to leave home station until return, for all service (subject to the exceptions which follow) in accordance with the practice at home station.

(b) If on arrival at point to which sent there is an opportunity to go to bed for five (5) hours or more before starting work, time will not be allowed for such hours, provided that in no case shall he be paid for a total of less than eight (8) hours at straight time rate for each working day, when such irregular daily hours at home station.

(c) Where meals and lodging are not provided by the Carrier, actual necessary expenses will be allowed.

(d) If, on completion of work at point to which sent, there is an opportunity to go to bed for five (5) hours or more before returning to home point, such hours will not be paid for.

(e) Employees will be called as nearly as possible one (1) hour before leaving time, and on their return will deliver tools at point designated.

(f) Wrecking service employees will be paid under this rule, except as provided for in Rule 4(f).

(g) Unless there is a further work assignment, the employee will be returned to home point on first available train after completing assignment."

The Organization maintains that when the Claimants left the derailment site at midnight for rest, their supervisors did not tell them that they were being released from service. The Organization argues further that the Claimants had been in service for only about twelve hours and were not in need of rest.

Finally, the Organization contends that the condition of the boarding car was inadequate to provide proper rest and that the Carrier's position on this issue has been inconsistent. The Organization contends that the claim should be sustained.

The Carrier contends that the crew was released for rest from 12 midnight until 5 a.m. on November 15, 1981. Because the crew's bulletin hours are 7 a.m. to 3 p.m., the Carrier argues that under Rule 10(i) of the controlling agreement, this release time is not to be paid. Rule 10(i) provides:

"While employees are away from their home point they may be released for periods of five (5) hours or more at any time except during regular bulletin hours and such release time will not be paid for."

The Carrier further argues that the car used for sleeping by the crew has always been used for sleeping; the first complaint about the car's condition was not filed until almost three weeks after the night in question. Further, the Carrier contends that its on-site supervisor reported that only one of the five Claimants was awake in the car; the rest of the crew, except for the cooks, did take rest from 12 midnight until 5 a.m. The Carrier contends that the claim should be denied.

This Board has reviewed all of the evidence and arguments in this case, and it finds that the language of the agreement between the parties supports the Organization's contention that the Claimants are entitled to additional compensation for the hours that they spent at the derailment site on November 14-15, 1981.

The Carrier and the Organization cite three separate contractual provisions that they contend govern this claim, Rules 4, 7 and 10. Rule 4 specifies which pay rates apply to overtime and calls; Rule 7 governs pay for wrecking and emergency road service; Rule 10 provides the appropriate rates of pay for regular road service assignments. Rule 7 or Rule 10 governs this factual situation. These two rules provide for slightly different rates of pay and treatment of rest periods lasting five hours or longer.

Rule 7 provides that employees will not be paid for rest periods that occur in two specific situations: before the road service work begins and after it is completed. Rule 10 contains provisions that are virtually identical to these, but adds a third situation in which employees will not be paid for rest periods: Rule 10(i) provides that employees will not be paid for rest periods that occur at anytime while employees are away from their home point. If the Claimants were actually released for a rest period, then it was of the type described in Rule 10(i).

The disposition of this claim, therefore, turns on whether Rule 7 or Rule 10 governs this situation. Rule 7 does not specifically exclude payment for the type of rest period at issue in this claim; Rule 10 does specifically exclude payment.

The Carrier argues that the Claimants were released for a five-hour rest period while working at a derailment site on November 14-15, 1981. Basing its contentions on Rule 10(i), the Carrier maintains that the Claimants should not be paid for this rest period. It is clear from the language of the agreement, however, that Rule 7, not Rule 10, governs this claim. Rule 7(f) provides that "[w]recking service employees will be paid under this rule, except as provided for in Rule 4(f)." Rule 4(f) establishes a double time rate for work performed after an employee completes sixteen hours of service within a twenty-four-hour period. The rule then states that this twenty-four-hour limit does not apply to wrecking crews, providing that "double time will continue for employees in wrecking service until released from the wrecking service work." Rules 7 and 4, therefore, specifically govern the pay rates for wrecking crews performing emergency road service, such as the Claimants, while Rule 10 is concerned with pay for regular road service.

From the language of Rules 4 and 7, it is clear that once a wrecking crew has worked long enough to reach the double time rate of pay, they will continue to receive it, subject to three specific exceptions. A wrecking crew will not be paid double time for a rest period that occurs before work begins at a particular site, for a rest period that occurs after the work is completed at a particular site, and double time will cease once the crew is released from wrecking service work. Only the third exception might apply to this claim.

The Carrier argues that the Claimants were released for a five-hour rest period and, therefore should not be paid double time for that period. It is unnecessary for this Board to determine whether "release for a rest period" has the same meaning as "release from the wrecking service work," for the purposes of Rule 4(f), because this Board finds that the Claimants were not properly released for a rest period during the night of November 14-15, 1981. This finding also makes it unnecessary for the Board to determine: (1) whether the boarding car provided adequate sleeping facilities, and (2) whether, absent a specific provision such as that in Rule 10(i), Rule 7 allows for the interruption of double time pay for a rest period that occurs while wrecking work is in progress.

The Board finds that the period from 12 midnight until 5 a.m. on November 15 was compensable waiting time, not a rest period, based on both the record and the authority of prior awards. The Claimants were told that the Hulcher crew was leaving the site for a rest period and that work would not resume until that crew returned at 6 a.m. Although some of the Claimants were told that they could rest, the record indicates that the sole reason given was the Hulcher's crew's departure from the site. Further, the Claimants were not in need of a rest period; they had been on the site for only about ten hours when the Hulcher crew left. The Claimants' therefore, were not notified that they were being released for a rest period. They should be compensated at the double time rate for the hours of from 12 midnight until 5 a.m. on November 15, 1981, because this was a waiting period.

Prior Second Division Awards support this determination. As the Board found in Award 8802, "The period in question herein was not a relief from duty due to fatigue. Rather, it was time spent waiting to perform the duties for which the wrecking crew had been summoned." Such a waiting period is compensable. Further, the Board sustained a claim in Award 4573 on the grounds that the Claimants were not properly relieved for a rest period because they were not so advised.


The Carrier is hereby ordered to make payment to Claimants as follows: E. O. Dickey, C. A. Hammonds, E. J. King, Jr., E. J. Lalierte, and A. W. Sears, Jr., (herein after referred to as the Claimants), one hour at the time and one-half rate and for four hours at the double time rate for hours of service between 12 midnight on November 14, 1981, and 5 a.m. on November 15, 1981, and the difference between time and one-half and the double time rate of pay for all work performed from 7 a.m. and 8:40 p.m. on November 15, 1981.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985