

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employees:

1. That the service rights of Carman W. McDaniel and rules of the controlling agreement were violated account he did not receive double time rate of pay for work performed on his second rest day, March 15, 1984.

2. Accordingly, Carman McDaniel is entitled to be additionally compensated for the difference between the rates of time and one-half and double time for his service (8 hours) on March 15, 1984.

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 employees 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.

Claimant was employed as an Car Inspector by Carrier at its Bryan Park Terminal in Richmond, Virginia. Claimant worked all of his regularly assigned hours during the week of March 9-13, 1984. On March 14, 1984, Claimant's first rest day, and on March 15, 1984, Claimant's second rest day, Carrier assigned Claimant to perform eight hours' work at a derailment site; he was paid at the time and one-half rate. The Organization thereafter filed a Claim on Claimant's behalf, seeking additional compensation for March 15, 1984, in an amount equal to the difference between the time and one-half and the double time rates for Claimant's eight hours of service.

The Organization contends that the Carrier violated Article V of the April 24, 1970 National Agreement, which provides:

"All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof."

The Organization argues that the Claimant qualified for the double time rate for his work on March 15 when he worked all the hours of his regular work week and eight hours on each of his two rest days. The Organization contends that the work performed on Claimant's rest days was not emergency work.

The Organization asserts that the Carrier must establish that emergency conditions existed on the day in question, but has failed to do so. The Organization points out that the Carrier did not send out a crew to handle the rerailment until the start of the first shift on March 14, eighteen hours after the derailment occurred on March 13. Moreover, the Carrier stopped work at the site after the end of the eight-hour shift on March 14; work did not resume until the next day. The Organization also contends that the Carrier could have sent out a crew immediately after the derailment occurred; both Richmond and another Carrier yard 70 miles north of the derailment site maintain operations 24 hours per day, 7 days per week. The Organization asserts that by waiting eighteen hours to dispatch a crew to the derailment site, the Carrier demonstrated that the work did not require immediate attention and, therefore, was not an emergency situation. The Organization therefore asserts that the Claim should be sustained.

The Carrier contends that the Claimant performed emergency work on his two rest days and does not qualify for the double time rate on the second day. The Carrier asserts that the record establishes that an emergency existed at the time. The Carrier argues that although this was not a mainline derailment and the mainline was not blocked, the situation did constitute an emergency; a locomotive needed for two assignments was blocked by the derailed cars. The Carrier asserts that quickly clearing the derailment and releasing the blocked locomotive were necessary for the Carrier to meet its operational requirements.

The Carrier states that if Claimant had worked in the shop on his first rest day, then he would have qualified for the double time rate for service on his second rest day. Employees called for emergency road work away from the shop, however, are paid under Rule 10 of the Agreement, which provides:

"An employee regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency road work away from said shop, engine house, repair track, or inspection point, will be paid from the time ordered to leave home station until his return, for all time worked in accordance with the practice at home station; and for waiting or for traveling, rate and one-half for the recognized overtime hours and straight time for the recognized straight time hours at home station. When the 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.

If, during the time on the road, a man is relieved from duty and permitted to go to bed for five or more hours, such relief time 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."

The Carrier contends that Claimant was called to perform emergency road service at an outlying point; Claimant did not replace an absent employee or augment the existing force. On his first rest day, Claimant did not perform his regularly assigned type of work. The Carrier therefore argues that the exception in Article V applies, and Claimant is not entitled to the double time rate of pay for service on his second rest day.

The Carrier also contends that under Rule 10, an emergency crew can be relieved from duty on the road for rest, and time and one-half is the proper compensation. The Carrier therefore asserts that there is no merit to the Organization's contention that there was no emergency because the wreck crew stopped work after eight hours on the first day. The Carrier argues that the nature of the situation determines whether emergency work is involved. The Carrier contends that this Board previously has found that an emergency situation was created by a Carrier's inability to meet its operating requirements because of inoperable locomotives that needed repair.

The Carrier therefore contends that the Claim is without merit and should be denied.

This Board has reviewed the record in this case, and we find that there is not sufficient evidence to support the Carrier's position that an emergency existed. Therefore, the Carrier violated the Claimant's right, pursuant to Article V, when the Claimant was not paid double time for working his second rest day in a row.

In asserting that an emergency existed, the Carrier is thereby raising an affirmative defense and bears the burden of proving, by competent evidence, that the work was of an emergency nature. (See Second Division Awards 5484 and 6252.) An examination of the record fails to show that the Carrier has fulfilled its obligation in that regard. The rerailing of five cars after eighteen hours was hardly the type of situation that constitutes an emergency. Moreover, the Carrier suspended operations at the derailment site on March 14 and waited until the first shift on March 15 to begin the operation again. That action on the part of the Carrier made it clear that the work involved did not require the immediate relief that an emergency situation demands. In the cases cited by the Carrier, most notably Second Division Awards 7246 and 6510, the Carriers provided extensive proof that emergencies existed so that any delay in performing the repairs would have had a significant, detrimental impact on the Carrier's operations. No such evidence was presented here in that regard. Therefore, the Claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December 1986.