

Award No. 228

Docket No. 229

2-D&SL-CM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 47, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE DENVER AND SALT LAKE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Claim that Sam Gendill and R. F. Emrich, car repairers, Leo Glenski and Carmine Colaiano, car repairer helpers, should be paid continuous time from time ordered to wrecking service at Utah Junction at 7:00 P. M., April 12, 1937, until return to Utah Junction, April 15, 1937, at 3:40 P. M., at pro rata rates.

JOINT STATEMENT OF FACTS: During the month of April, 1937, the employes named in the above statement of claim were employed in the capacities stated at Utah Junction, the eastern terminus and main shop point of the carrier, and were assigned to regular hours of duty from 8:00 A. M. to 4:30 P. M., daily except Sundays.

On April 12, at 7:00 P. M., they reported on a call at Utah Junction for the purpose of accompanying a wrecking derrick train to clear a wreck at Cary, a station located 215 miles west from Utah Junction.

The wrecking derrick train left Utah Junction at 7:00 P. M., April 12, and arrived at Cary at 5:00 A. M., April 13. The four employes mentioned herein were permitted to go to bed, when they left Utah Junction, in a car fully equipped with adequate sleeping accommodations, and they took advantage of this permission.

The men were again called to go to work at Cary at 5:00 A. M., Tuesday, April 13, and assisted in clearing the wreck from that time until 4:15 P. M., April 13, at which time the train left Cary and arrived at Craig, the western terminus of the line, 228 miles west from Utah Junction, at 5:00 P. M., April 13.

All of the four men, except Colaiano, were released from duty at Craig at 5:00 P. M., April 13. Colaiano was held on duty at Craig until 7:00 P. M. for the purpose of preparing meals for the crew, at which time he also was released.

On April 14 Colaiano resumed duty at 6:00 A. M. to prepare a meal for the crew, and the other three men resumed duty at 8:00 A. M.

The train left Craig at 8:00 A. M., April 14, arrived at Cary at 8:45 A. M., and the men assisted in completing clearing the wreck from that time until 4:30 P. M., April 14, at which time Emrich, Gendill and Glenski were released from duty and rode in the sleeping car, hereinbefore mentioned, from Cary to Phippsburg. Colaiano was continued on duty from 4:30 P. M. to 9:30 P. M. to serve meals to the men.

negotiating parties, applies only to an individual traveling to fill a "Temporary Vacancy." Obviously a separate car would not be furnished for such purpose and if any such unreasonable interpretation should be placed on Rule 6 (b) it would defeat the purpose which the rule was intended to serve. Furthermore, it would be highly unreasonable and discriminatory to say that one employe traveling from home station should be governed by Rule 6 (b), just because he may be engaged in a certain class of temporary service, while another employe also traveling in temporary service is not governed by that rule.

It is a well settled rule of construction that a provision of a contract will be construed, if possible, so as to avoid an unreasonable, arbitrary or discriminatory result.

Description of Wrecker Sleeping Car

On December 1, 1935, Car 671, formerly used as a mail car, was completely changed and equipped as a sleeping car for members of the wrecking crew. The interior is equipped as follows:

Finish—Brown and White.
 Seating capacity for 16 men.
 Sleeping accommodations for 24 men.
 One toilet room.
 Bedding—A good grade of army blankets, mattresses and pillows.
 Two washing bowls with overhead gravity water supply.
 Baker heating system.

On arrival at Utah, Junction, the terminal, after each trip on which the car is used, it is thoroughly scrubbed and cleaned with compressed air and the blankets are laundered at frequent intervals.

Inasmuch as it is mutually agreed in the joint statement of facts in this case that the car used by claimants when released from duty was ". . . fully equipped with adequate sleeping accommodations . . .," the Board cannot, of course, properly entertain any evidence or argument to the contrary. The carrier, therefore, limits its submission with respect to this phase of the question to the foregoing description of the sleeping car with the thought that it may be helpful in arriving at a proper understanding of the situation.

The carrier respectfully submits that the claim should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

The work performed by the employes involved in this dispute was wrecking service. Rule 80 of the current agreement provides that wrecking service will be paid for under Rule 4.

The claimants are contending for continuous time at pro rata rates from 7:00 P. M., April 12, 1937, until their return to Utah Junction, 3:40 P. M., April 15.

Rule 4 provides:

"(a) . . . 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 will be paid straight time rates for straight time hours and overtime rates for overtime hours for all time waiting or traveling.

(b) If, during the time on the road, including all wrecking service, a man is relieved from duty and permitted to go to bed for five or more hours outside of regular bulletin hours at home point, such relief will not be paid for; provided that in no case shall he be paid for a total of less than eight hours each calendar day, . . ."

The rule applicable to the instant dispute provides that the claimants are entitled to continuous time from 7:00 P. M., April 12, 1937, until relieved on April 13, and continuous time from 8:00 A. M., April 14 until relieved at home point April 15, 1937.

AWARD

This dispute to be disposed of in accordance with aforesaid findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1938.

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 228
DOCKET NO. 229**

**NAME OF ORGANIZATION: Railway Employees' Department, A. F. of L.
(Carmen)**

NAME OF CARRIER: The Denver and Salt Lake Railway Company

Upon application of the representative of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The term "pro rata" used in the findings was merely the statement used in the employes' claim, and the award should be in accordance with the provisions of Rule 4 of the current agreement.

While the claim in this dispute was made for payment at "pro rata" rates for the period "7:00 P. M., April 12, 1937, to 3:40 P. M., April 15, 1937," it is not supported by the rules of the agreement; the rule applicable and the period for which payment should be made are quoted in the findings of the Division.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: J. L. Mindling
Secretary**

Dated at Chicago, Illinois, this 2nd day of June, 1938.