

Award No. 890

Docket No. 853

2-Wab-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement Carmen John Arnold, Willis Morrison and Ray Smith be compensated four hours each for work performed from 6:00 A. M. until 8:00 A. M., June 25, 1942.

EMPLOYEES' STATEMENT OF FACTS: Carmen Arnold, Morrison, and Smith are employed by the Wabash Railroad Company at Luther, Missouri, and are carried on the seniority roster at Luther, Missouri.

There are three shifts employed at Luther (seniority point). Carmen Arnold's, Morrison's, and Smith's regular assigned hours are from 8:00 A. M. to 12:00 Noon, and 12:30 P. M. to 4:30 P. M.

In addition Carmen Arnold, Morrison, and Smith are carried on overtime call list.

On June 25, 1942, at about 5:30 A. M. Carmen Arnold, Morrison, and Smith were called by Foreman Neidhart to report at Fourth Street, St. Louis to reraill cars. The men called reported and began work at 6:00 A. M. as requested and rerailed Wabash cars 45967 and 49627, completing work at 8:00 A. M.

POSITION OF EMPLOYEES: It is our contention that Carmen Arnold, Morrison, and Smith were called to work outside of their regular working hours at their seniority point and should be compensated four (4) hours for work performed between 6:00 A. M. and 8:00 A. M.

Rule 4 (d) reads as follows:

Employees called or required to report for service and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less.

This rule specifically states that employees will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less.

The carrier's position in conference on July 27, 1942, was that the claimants were properly compensated under Rule 7 of our existing agreement. (See Exhibit A.)

Rule 27 (a) reads as follows:

Seniority of employees in each craft covered by this agreement will be confined to the point employed.

This rule specifically states that an employee's seniority will be confined to the point employed. The claimants performed work in question at the point employed.

For the service performed between 8:00 A. M. and 4:30 P. M., exclusive of the meal period, they were allowed eight hours at straight time rate.

POSITION OF CARRIER: The claim of Carmen Arnold, Morrison and Smith for four (4) hours for the wrecking service performed between the hours of 6:00 A. M. and 8:00 A. M. on the date in question is not justified under the rules of the schedule for shop crafts, effective June 1, 1939.

As shown in the carrier's statement of facts, Carmen Arnold, Morrison and Smith were engaged in wrecking service between the hours of 6:00 A. M. and 8:00 A. M. on June 25, 1942, for which they were compensated in accordance with the provisions of Rule 7, that part pertaining to wrecking service is again quoted by the carrier as follows:

"Wrecking service employes will be paid under this rule, except that all time working, waiting or traveling on Sundays and holidays will be paid for at rate of time and one-half, and all time working, waiting or traveling on week days after the recognized straight-time hours at home station will also be paid for at rate of time and one-half." (Emphasis supplied.)

The rule hereinbefore quoted specifically defines the manner in which employes performing wrecking service will be compensated and there is no rule in the agreement that provides for or contemplates that employes called to perform wrecking service under the circumstances existing in this case will be allowed payment on the basis of a call.

When consideration is given to these facts, it is obvious that the alleged claim as set up by the petitioner in his ex parte submission of claim is without basis under the rules of the existing agreement.

The submission of this alleged dispute to the Board is without question an attempt on the part of the committee to change the agreement effective June 1, 1939 concerning rates of pay, rules and working conditions covering shop crafts in a manner contrary to the provisions of Section 6 of the Railway Labor Act; therefore, the contention of the committee should be dismissed and the claim 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 carrier relies on Rule 7, which has no application in the circumstances involved in this particular case. Claimants are entitled to payment under the provisions of Rule 4-D.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of February, 1943.