

Award No. 986

Docket No. 937

2-NP-CM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. Claim of Andrew Walker, Ralf Thorp, Van Woolery, P. H. Stelling, D. E. Lowe, J. F. Dillman and M. H. Telford, employed in Auburn, Washington, Car Department, that they were improperly compensated under rules of the current agreement, and particularly Rule 11 thereof, and for additional payment while engaged in wrecking service at Cle Elum, Washington, from November 20 to December 4, 1942, inclusive.

2. That the members of the wrecking crew, namely:

Andrew Walker, P. H. Stelling, Ralf Thorp, Van Woolery, D. W. Lowe, J. F. Dillman, M. H. Telford.

are entitled to be paid, less the amounts which they received, as follows:

- (a) November 20, 21, 23, 24, 25, 27, 28, 30 and December 1, 2, 3 and 4, straight time from 7:30 A. M. to 4:00 P. M.; time and one-half from 4:00 P. M. to 10:00 P. M., and time and one-half from 6:00 A. M. to 7:30 A. M.
- (b) November 22, 26 and 29, 1942, time and one-half from 6:00 A. M. to 10:00 P. M.

JOINT STATEMENT OF FACTS: On November 20, 1942, the Auburn wrecking crew was called for service at 2:00 A. M. on account of the derailment of a passenger train near Cle Elum, Washington, arriving at the scene of the derailment at 7:30 A. M. same date. They completed the work of clearing the wreck at 7:30 P. M. on December 4, and departed for Auburn, their home station, at 8:00 A. M., December 5, arriving there at 5:20 P. M. They were relieved from duty by the carrier each day, November 20 to December 4, inclusive, during hours other than those between 10:00 P. M. and 6:00 A. M., and were not paid for such time.

POSITION OF EMPLOYES: Rule 11 of the current agreement reads as follows:

An employee regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency work away from such shop, engine house, repair track, or inspection point, will be paid from the time called to leave home station until his return for

this time. Rule 11 does not sustain this contention which is obviously contrary to the intent of the rule as written and as interpreted by the employees themselves and by this Division in Award 154.

In presenting this claim the employees seek to secure a guarantee of sixteen hours pay per day by contending that the rest period may not exceed eight hours per day between the hours of 10:00 P. M. and 6:00 A. M. To accomplish this result they have ignored two specific provisions of Rule 11, viz., that contained in the first paragraph which provides that the employee will be paid for all time worked in accordance with practice at home station which is a guarantee that the employee will receive no less for working at away from home point than he would have received for working at home station; and secondly they have ignored the specific guarantee provision of the second paragraph of Rule 11 which provides that in no case shall the employee be paid for a total of less than **eight hours each calendar day when the emergency service prevents the employee from making his regular hours at home station.**

It is perfectly plain that if Rule 11 contemplated a guarantee of sixteen hours, as the employees now contend, the rule would have so stated and would not specify a guarantee of eight hours as the rule reads.

The guarantee clause of the second paragraph of Rule 11 is a part of the same sentence that provides for the period during which an employee is permitted to go to bed. This plainly shows that there was no question in the minds of the parties who negotiated the rule that a guarantee of eight hours as specifically stated and nothing else was intended. To give the rule the effect the employees now contend for it will be necessary to change the language of Rule 11 which is something this Board has no authority to do.

This claim is not sustained by the plain language of Rule 11 or by the generally accepted interpretation and application of the rule during the time it has been in existence, and the claim should therefore 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 11 provides that the relief period for first shift employees shall be between the hours of 10:00 P. M. and 6:00 A. M., and for those employed on other than first shift, rest shall be during the employees' normal rest period.

Without passing upon the question of what is the normal rest period of the second and third shift employees, the Division holds that for the first shift employees involved the claim should be sustained.

AWARD

Claim sustained in accordance with the foregoing findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1944.