

Award No. 1079

Docket No. 1022

2-C&NW-CM-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the carrier improperly compensated the Huron, South Dakota, wrecking crew for wrecking service performed from 12 noon to 1:00 P. M. on Monday, July 31, 1944, under controlling agreement.

2. That the carrier be ordered to additionally compensate this wrecking crew (Carmen Ed. Fuglsang, Martin Anderson, Bert Dahl, Fred Brandenburg, K. Bjerkeset and Sam Parker) from 12:00 noon to 1:00 P. M., Monday, July 31, 1944, at rate of time and one-half, under the controlling agreement, and particularly Rules 9 and 10.

JOINT STATEMENT OF FACTS: On Monday, July 31, 1944, the Huron, South Dakota, wrecking crew was ordered to proceed to Sleepy Eye, Minnesota, to perform wrecking service at the latter point. The crew departed from Huron at 9:00 A. M., traveling with the wrecking outfit to Sleepy Eye where they arrived at 4:00 P. M. The regularly assigned hours of the wrecking crew at Huron, their home point, were 7:00 A. M. to 12:00 o'clock noon, and from 1:00 P. M. to 4:00 P. M. For travel time between 12 o'clock noon and 1:00 P. M., their assigned meal period at home station, the crew claimed one hour's compensation at rate of time and one-half but were allowed one hour's compensation at pro rata rate.

The controlling agreement is dated effective July 1, 1921, amended January 1, 1925.

POSITION OF EMPLOYES: It is submitted that if these claimants had been used to progress a job at their "home station" from 12:00 noon to 1:00 P. M. on Monday, July 31, 1944, as they were in fact used to expedite the completion of a wrecking service assignment at Sleepy Eye, Minnesota, then the carrier would have paid them time and one-half therefor, as provided in Rule 9, which in part reads—

"Overtime rates will be paid for actual time worked during regular meal period."

plus having thereafter allowed these claimants their actual meal period with pay, as further provided in the rule reading—

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 hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by Railway Company, actual necessary expenses will be allowed.

Employes will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at point designated.

If required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight-time rate.

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."

It will be noted that Rule 9 provides for payment at overtime rates for actual time **worked** during regular meal periods and that the last paragraph of Rule 10 provides that wrecking service employes will be paid at rate of time and one-half for all time working, waiting, or traveling on weekdays **after** the recognized straight-time hours at home station.

On Monday, July 31, 1944, the Huron wrecking crew did not perform any work during the regular meal period, 12:00 noon to 1:00 P. M., but were traveling during that period, and therefore would not be entitled to compensation at overtime rate for that period under provisions of Rule 9. Further, the travel time on July 31, 1944, during period 12:00 noon and 1:00 P. M. was not **after** the recognized straight-time hours at home station as referred to in Rule 10. Such travel time was during the interval of the straight-time hours, viz., 7:00 A. M. to 4:00 P. M.

It is the position of the railway company that it was not the intent of the last paragraph of Rule 10 to consider the meal period as being "after the recognized straight-time hours at home station" and that in accordance with the application of Rule 10 that has been in effect for a number of years without previous protest from the employes or their authorized representatives, the members of the Huron wrecking crew were properly compensated at pro rata rate for travel during their regular meal period on July 31, 1944.

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.

This case was submitted on a joint statement of facts. The Huron, South Dakota wrecking crew was ordered to proceed to Sleepy Eye, Minnesota, to perform wrecking service. The regularly assigned hours of the wrecking crew at Huron, their home point, was 7:00 A. M. to 12:00 o'clock noon, and from 1:00 P. M. to 4:00 P. M. The crew departed from Huron at 9:00 A. M., traveling with the wrecking outfit to Sleepy Eye, where they arrived at 4:00 P. M. The crew claimed one hour compensation at rate of time and one-half for travel time between 12 noon and 1:00 P. M., their assigned meal period at home station.

The controlling rule is No. 10 of the current agreement. We quote the essential part:

“Wrecking service employees will be paid under this rule, except that . . . 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 time and one-half.”

The parties when they entered into the agreement, placed in same the words, “after the recognized straight time hours at home station.” Clearly, the language quoted means that the time and one-half provision for travel time does not become effective until after the recognized straight time hours at home station. There was no violaion of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1945.