

Award No. 1429

Docket No. 1355

2-MP-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That under the controlling agreement and particularly Rule 7 (e), the carrier did not properly compensate the Kansas City wrecking crew while in wrecking service at Myrick, Missouri, from 12:30 P. M. March 2, 1948 to 8:00 A. M. March 6, 1948.

(b) That the carrier be ordered to additionally compensate the Kansas City wrecking crew, namely:

Joe Sestak	—Lead Carman
Ed. Harmon	—Carman
R. J. Russell	—Carman
H. C. Chatterson	—Carman
F. Lipovitz	—Carman
Mike Vutich	—Carman
Ralph Howard	—Carman
Ralph Slazak	—Carman

for 11½ hours at the time and one-half rate from 8:30 P. M. March 5 to 8:00 A. M. March 6, 1948.

EMPLOYEES' STATEMENT OF FACTS: On March 2, 1948 Kansas City wrecking crew, and hereinafter referred to as the claimants, whose regular assigned hours at home point are from 8:00 A. M. to 4:30 P. M. with thirty minutes for lunch, was called at 8:00 A. M. for derailment at Myrick, Missouri. Crew, accompanied by wrecking outfit, departed from Kansas City at 9:15 A. M., arriving at Myrick, Missouri at 12:30 P. M. Upon arrival the crew immediately went to work, working continuously excepting tie ups for rest, until 8:00 P. M. March 5, 1948 at which hour all wrecking work was completed with all scrap loaded and wrecker tied down for movement to home point.

At 8:30 P. M. it was necessary to tie the train and engine crew up for rest, and call the section crew to transfer a car of kitchen stools, which was completed that night, and the next morning, March 6, they had a car of rugs to shift; when this was completed, the train crew switched the wrecked cars, made up hospital train, there being two cars minus draw bars, which members of wrecking crew chained together, and hospital train was ready to

although maintenance of way forces worked during the night after the claimants had been relieved from duty at 8:30 P. M., March 5, 1948.

5. After the transfer of freight from the two cars referred to above had been completed at 11:00 A. M., March 6, it required claimants until 12:15 P. M., March 6, to complete preparation of wrecking train for movement to Kansas City.
6. The claimants were required to chain together cars CRI&P 158160 and GN 42713 after they had been switched into the train because the draw bars and draft gears were missing.
7. They were required to hoist and load onto their train an 8000-pound ingot of iron at Mile Post 267, Pole 20, which is work wrecking crews have always performed when required of them.

It is obvious that had the carrier required the claimants to continue working after 8:30 P. M. on March 5 until the work had been completed and the wrecking train ready to begin its movement to Kansas City, they could not have completed it until 12:45 A. M., March 6, 1948, which would have required them to work continuously from 8:00 A. M., March 5, to 12:45 A. M., March 6, a period of 16 hours and 45 minutes. Then if the wrecking train had begun its return trip to Kansas City at 12:45 A. M., March 6, 1948, based upon the actual time it did require to make the trip, i. e., 12:15 P. M. to 6:30 P. M., it would not have arrived at the home terminal (Kansas City) until 7:00 A. M., March 6, 1948, requiring the claimants to remain on duty continuously for an additional 6 hours and 15 minutes, or a grand total of 23 hours continuously on duty.

We believe your Board will readily agree with us that had the carrier required these claimants, under the circumstances, to remain on duty continuously for such a long period as 23 hours without rest, it would have been guilty of oppressive conduct toward these claimants and the train and engine crews required to operate the hospital train.

Based upon a comparison of all the facts present in Docket No. 1018 with all of the facts present in the case now before you, we believe your Board will agree with the carrier that the findings in Award No. 1078, when applied to the facts here, will require a denial of the employees' claim.

Furthermore, it is our position that a close study of the Court's decision in *United States v. Thompson*, 146 Federal Reporter, 2nd, 475, will lead your Board to conclude that a wrecker departing out of its home terminal remains a wrecker until it returns to its home terminal (in this case, Kansas City), provided its return is, to use the Court's language,

“ . . . without unnecessary delay or interruption.”

We do not believe it can be reasonably argued that there was such “delay or interruption” in the return of the wrecking train to Kansas City in the case here before you for decision.

It naturally follows, therefore, that the employees' claim is without support under the rules, the facts in this case, or the practice on the property and has no merit as a matter of equity.

For the reasons heretofore stated, this 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.

This dispute arises principally from the fact that the parties are in disagreement about a situation not involved. The carrier takes the position that although a wreck might be cleared up, if for some operational reason within its discretion it decides to hold the crew over night, or some other period, before starting them on their return, it can count this as relief under the provisions of Rule 7-b; whereas the organization insists that in such case, such **holding time** must be regarded as **waiting time**. With the latter contention this Division agrees. However, that was not the situation actually involved in this case. When the wrecking crew tied up on March 5, 1948, the wrecking work was still not in fact completed. There were two cars, the contents of which, were still to be transferred, as the cars in question had lost their draft gear and could not be handled in a revenue train, but instead had to be chained up, and handled by the wrecking crew. This transfer of lading was not completed until after the wrecking crew resumed duty the morning of March 6th. This finding does not conflict with that covered by Award 1078. In that case the wrecking work had been completed the previous evening, but for safety reasons the management decided not to run the wrecking train home during the night time. As a consequence, it became necessary to cut the train for a street crossing and re-chain it together in the morning when they were ordered to start back. This cutting and re-chaining was not a part of clearing the wreck, but an ordinary train operation. Here, however, the wrecking work had not been completed the night before.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1951.