Award No. 1635
Docket No. 1537
2-CI&L-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 32, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly compensated the Lafayette, Indiana wrecking crew composed of the following men:

Phillip Ostheimer
Harold Elliot
R. F. Maxwell
Roy Buikema
Floyd Spaulding
Albert Coulter
Ed Halsma
Fred Justice

when they were denied compensation for:

a) The hours from 6:50 P. M., June 21, 1951 to 7:00 A. M., June 22, 1951 inclusive, that they were tied up at Orleans, Indiana.

b) The hours from 4:50 P. M., June 22, 1951 to 6:25 A. M., June 23, 1951 inclusive, that they were tied up at McDoel Terminal.

2. That accordingly the Carrier be ordered to compensate the aforesaid members of the wrecking crew for the aforementioned hours set forth in (a) and (b) above at the applicable rate of pay.

EMPLOYES' STATEMENT OF FACTS: The carrier had a serious derailment at Orleans, Indiana, at 11:55 P.M., June 18, 1951, which consisted of three locomotives and fourteen cars. The Lafayette derrick and crew, composed of the above named employes (hereinafter referred to as the claimants) were called at 2:00 A. M., June 19, 1951, for 3:00 A. M. and arrived at Orleans, Indiana, at 10:20 A. M., June 19, 1951. On June 21, 1951, after

ing, waiting or traveling, except if relieved from duty and permitted to go to bed for five or more hours, they will not be allowed time for such hours, provided that in no case shall an employe be paid for less than eight hours on week days, and eight hours at one and one-half time for employe's assigned rest days and recognized holidays for each calendar day. Employes will be called as nearly as possible one hour before leaving time and on their return will deliver tools at designated point."

Rule 6, relied upon by the employes covers the rate applicable to overtime service and to holiday service. It does not cover or mention emergency road work, and is not applicable as a basis for payment of these employes when they are used in road wrecking service. On the other hand Rule 10 specifically covers the method and basis for paying **"Employes sent out on the road for** emergency service". Certainly the claimants were sent out on the road for emergency service. Rule 10 provides that such employes will be paid **continuous time from time called until they return,** as follows:

"Overtime rates for all overtime hours and straight time for the recognized hours at home station, whether working, waiting or traveling, except if relieved from duty and permitted to go to bed for five or more hours, they will not be allowed time for such hours . . ." (Underscoring added.) The claimants were paid from the time called until they returned to their home station at the applicable rate for the hours involved, whether working, waiting or traveling, except, of course, no payments were made for those hours covered by the exception contained in the rule.

The hours for which the instant claim is made and payment denied by the carrier are hours covered by the exception in Rule 10. The Lafayette (shops) derrick crew were relieved from duty and permitted to go to bed for five hours or more on both dates, and were not on duty during the hours for which instant claim is made. The exception appearing in Rule 10 certainly covers and is applicable to those two periods of time for which the employes now request payment. The employes received pay for eight hours or more for each calendar day at the applicable rates of pay. The rule is clear and definite and has been applied since its inception just as it was in the instant case.

In conclusion, the carrier contends that these employes were properly used, released and compensated under the rules of the current agreement between the parties, for their tour of duty between 3:00 A. M., Tuesday, June 19, 1951, and 11:50 A. M., Saturday, June 23, 1951, which includes the two periods of time for which instant claim is made; that Rule 153 was not violated by the carrier; that Rule 10 is the applicable pay rule; and that Rule 6 is not the applicable pay rule for these employes when engaged in road wrecking service.

For reasons given this claim should be denied and the carrier respectfully requests that the Board so decide.

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 waived right of appearance at hearing thereon.

A serious derailment occurred at Orleans, Indiana, on June 18, 1951, involving three locomotives and fourteen cars of this carrier. The Lafayette

derrick and crew was called at 2:00 A. M. on June 19, 1951. They arrived at Orleans at 10:20 A. M. following. After the re-railing was completed, some of the crew were used to load the wreckage of one car destroyed in the accident and others to perform work necessary to moving certain of the damaged cars to the shops. The derrick was ready to be moved at 6:50 P. M. on June 21, at which time they were directed to be held over until 7:00 A. M., June 22. On account of other work found to be necessary, the wreck train did not depart until 11:40 A. M. on June 22. On arrival at McDoel Terminal at 3:30 P. M., they found no train crew available to move them to their home station of Lafayette and they were held over until 6:25 A. M. on June 23. They arrived at Lafayette at 11:45 A. M. on June 23, 1951.

The crew makes claim for the time they were held over at Orleans after the rerailing was completed and for the time they were held over at McDoel Terminal, under Rule 153 which provides in part as follows:

> "Crews will be returned to their home station when their work is finished."

It appears that when claimants were called for service at 7:00 A. M. on June 22, the train crew lined up the damaged equipment and the entire crew was then used to service boxes and cut off protruding parts for clearance in the movement to Lafayette shops. The train consisted of one car of scrap, three damaged Diesel-Electric units, ten damaged cars and the derrick outfit. It was moved without air brakes, safety appliances and with loose and protruding parts. Frequent inspections required numerous stops. Servicing was frequently required. The train arrived at McDoel at 3:30 P. M. and the crew was tied up at 4:50 P. M. The crew was called the next day at 6:25 A. M. and the train proceeded as before, arriving at Lafayette at 11:45 A. M.

It is the contention of claimants that the crew should have completed its work on the evening of June 21 and the trip started back to Lafayette. For failure to so handle the situation, claimants contend they should be paid for the time they were held over, to wit: from 6:50 P. M. on June 21, 1951 to 7:00 A. M. on June 22, 1951. Claimants also assert that carrier violated the agreement in holding the crew over at McDoel and that they should be paid from 4:50 P. M. on June 22, 1951, to 6:25 A. M. on June 23, 1951.

We think carrier acted within its managerial prerogative in tying up the crew at Orleans at 6:50 P. M. on June 21. The hospital train was not ready to move at that time. Claimants contend it could have been made ready in an hour. Carrier asserts it actually required two and one-half hours. The conditions of the power units and cars in the train and the inherent dangers involved certainly justified the carrier in moving this train into Lafayette during daylight hours when conditions could be better observed.

The claim for pay for the lay-over period at McDoel cannot be sustained. There is evidence that there was no crew at McDoel who held contractual rights to operate this train from McDoel to Lafayette. But even if this could be construed as negligence on the part of the carrier, nevertheless other considerations justify the lay-over at McDoel. It had taken three hours and fifty minutes to move the train from Orleans to McDoel, a distance of forty miles. At the same rate of progress, it would have taken almost nine hours to move from McDoel to Lafayette. We think the carrier was justified in not commencing the trip at 4:50 P. M. on June 22.

It is true that this train movement was made with a minimum of difficulties. It made the trip from McDoel to Lafayette in five hours and twenty minutes, a better time than was expected. But carrier was required to make its decision on the situation as it appeared before the trip was made, not on the facts as they subsequently proved to be. A carrier is required to look out for the safety of its property and its employes. An estimation of time for moving a train such as the one here involved cannot be made with accurracy. As long as there is a reasonable basis for the judgment exercised, no basis for a claim exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1953.