Award No. 1971
Docket No. 1821
2-MP-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly compensated members of the Kansas City Wrecking Crew when on road assignment June 24 and 25, 1952.

2. That accordingly the Carrier be ordered to compensate the Kansas City Wrecking Crew, namely:

Joe Sestak	Leadman
R. Selzak	Carman
E. C. Campbell	Carman
R. Howard	Carman
R. Stucckey	Carman
R. Russell	Carman

nine and one-half (9½) hours each at the overtime rate from 6:30 P. M. June 24th to 4:00 A. M. June 25th, 1952.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains regular assigned crew and wrecker at Kansas City, Missouri. In addition to performing wrecking service they perform other duties when wrecking derrick is used. Assigned hours at home point for wrecking crew is 8:00 A. M. to 4:30 P. M.

On June 23, 1952, the carrier ordered the wrecker outfit and the regular assigned crew for 12:30 P. M., June 23, 1952, to go to Falls City, Nebraska, which is located 103 miles north of Kansas City on the Omaha Division in train No. 177, a regular scheduled train, to load stationary boilers. The outfit and crew arrived at Falls City and tied up at 8:30 P. M., June 23, 1952 until 7:00 A. M., June 24, 1952. Started work at 7:00 A. M., June 24, completing their work at 6:30 P. M., June 24.

The outfit was tied down and ready for the return trip to their home point of Kansas City, Missouri, when they were tied up at Falls City by

that return is, of course, without unnecessary delay or interruption. Otherwise stated, if the return is an expeditious, routine movement of the wreck train, and incident to the movement of all wreck trains as a part of each emergency caused by an individual wreck. It seems to me that the return of the wreck train, the resupplying of it, as a routine part of its work, must be a part of the work of a wreck train, the crew operating it must still be working as a wreck or relief crew."

Upon appeal to the Circuit Court of Appeals, Eighth Circuit, the decision of the lower Court was affirmed. See United States v. Thompson, 146 Federal Reporter, 2nd, 475.

The effect of the Court's conclusions is that the service for which called (wrecking service) did not end until the wrecker and hospital train were returned to home terminal at Jefferson City.

In the instant case, the service did not end until the relief outfit was returned to Kansas City and tied up, because they were not **released** prior thereto. The claimants recognized this fact on their time cards and so claimed their time. In doing so they also recognized that they were to be paid under Rule 7, and that the time from 6:30 P. M. June 24 until 4:00 A. M. June 25, 1952, was **relief** time and not **waiting** time.

CONCLUSION

Without waiving in any manner whatsoever the position of the carrier fully presented in the foregoing pages of this submission, if the monetary claim presented by the employes should be sustained by your Board on the theory claimants were held **waiting** between the hours of 6:30 P. M. June 24, and 4.00 A. M. June 25, 1952, during which time they were relieved from duty for 9½ hours of sleep and rest, then the compensation for said 9½ hours claimed must be at the straight time rate under the provisions of paragraph (a) of Rule 7 which reads in part as follows:

". . . and straight time rate for all time **waiting** or traveling, except on their rest days and holidays. . . ."

The exceptions are not applicable for the reasons no rest days nor holidays were involved during period of service with the derrick outfit.

Furthermore, your Board has held in numerous awards that the measure of damages or penalty for work not performed, where those entitled to perform such work are wrongfully deprived thereof, is the pro rata rate of the position. Second Division Award No. 1782—Third Division Awards 5261 and 6157.

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.

These claimants are regularly assigned carmen employed at Kansas City, Missouri, with hours 8:00 A. M. to 4:30 P. M. They are also assigned members of the crew of a wrecker which is headquartered at the same point.

On June 23, 1952, they were called for 12:30 P. M. to accompany the derrick with kitchen and bunk cars to Falls City, Nebraska, 102 miles distant, to load stationary boilers for movement out of that point. They arrived at Falls City that evening and tied up. At 7:00 A. M., June 24, they entered upon their tasks and worked from that hour to 6:30 P. M. the same day. The claimants contend that their work had been completed but that carrier had tied them up there from 6:30 P. M., the 24th to 4:00 A. M., the 25th to await train 162.

Claim is made for 9.5 hours at overtime rate for the hours 6:30 P. M. to 4:00 A. M., contending that it constituted waiting time and payable under Rule 7 of the current agreement.

Carrier in its Statement of Facts implies that the work at Falls City was not fully completed on the evening of June 24, stating at page 2, for instance, "On June 25, 1952, claimants were brought on duty at 4:00 A. M., completed their work at 5:00 A. M., * * *." The correspondence set forth in the submission, however, does not support this assertion and we assume, for the purposes of the case, that the hold over was not necessitated by the fact of unfinished work, but for the convenience of the carrier in moving its equipment on a regularly scheduled train. See also Rule 7(c) for reason why claimants were called back one hour before departure.

The organization in its rebuttal disclaims that its claim rests on a contention that claimants were in wrecking service. While there is much in the submission foreign to the issue, we believe that we correctly state the question to be whether the relief time provision of Rule 7(b) can properly be applied to a case such as this where the work which they were taken out on the road to perform had been completed prior to being relieved, or, whether the relief hold-over should be considered waiting time under Rule 7(a).

Any reference to wrecking service practices and awards would appear irrelevant to the discussion of the question presented which in no way concerns that subject.

Confining ourselves to the facts of this case, we find no merit in the carrier's contention that this crew was relieved so that they might sleep and rest. The record reflects that this train was equipped with kitchen and bunk cars. Under the circumstances, the needed sleep and rest could have been obtained on the seven or eight hour journey to their home station. The only reason that can be gleaned from this record for the hold-over in Falls City, was to make connections with regularly scheduled Train No. 162. If this better convenienced the carrier than to provide a separate movement, all well and good. However, the loss in time resulting to the employes cannot be covered by resort to the relief Rule 7(b). This latter rule would have come into play if the loading work had progressed into the second day, but such is not the case at hand. (See distinction drawn in Award No. 1429.) It avails carrier nothing to agree that the assignment wasn't completed until the crew tied up at headquarters, because travel time as well as waiting time is compensible under Rule 7(a).

There is nothing to show that this nine and one-half hour wait occurred on the employes' rest day or a holiday, hence they shall be compensated at the pro rata rate pursuant to the express provisions of Rule 7(a).

AWARD

Claims sustained but at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.