Award No. 2490
Docket No. 2325
2-MP-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2 RAILWAY EMPLOYES' DEPARTMENT A. F. of L.-C.I.O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier improperly compensated Carmen William Frederick, E. S. Pulse and E. M. Kent for September 21, 1954 for waiting and traveling time returning from Chester, Illinois to Dupo, Illinois.

2. That the Carrier be ordered to additionally compensate the Claimants the difference between straight time rate they received and the time and one-half rate which they were entitled to for 6-hours and 30-minutes working, waiting and traveling after their regular assigned hours at home station.

EMPLOYES' STATEMENT OF FACTS: A wrecking derrick and crew is maintained by the carrier at Dupo, Illinois, to perform wrecking service and other emergency work. They are also used to transfer loads and bridge material or perform other miscellaneous work at terminal or on line of road. A part of the wrecking crew, namely, Wm. Frederick, lead carman, Wm. Lowe, wrecking engineer, E. S. Pulse and E. M. Kent, carmen, whose regularly assigned hours at home station are from 6:30 A.M. to 11:00 A.M. and from 11:30 A.M. to 3:00 P.M., accompanied by the wrecking derrick X-107 on September 21, 1954, departing from Dupo, Illinois at 10:45 A.M. to go to Chester, Illinois, where they commenced work at 4:15 P.M. on air dump car MM-444, which had locked roller bearing due to hot box, and completed their work at 5:00 P.M.

The derrick and convoy car were placed on rear end of Train No. 76 with wrecking crew at 6:00 P.M., September 21, 1954, same day, for return to Dupo. Arriving at Dupo at 9:30 P.M. same day, and after supplying wrecker with coal, cleaning fire, filling water tank and making the wrecker ready for future use, they were relieved at 11:00 P. M., September 21, 1954. These men were in continuous service from 6:30 A.M. until 11:00 P.M. (16½-hours) when they were relieved at Dupo, Illinois at their home station.

compensated at the pro rata rate pursuant to the express provisions of Rule 7(a)." (Emphasis supplied.) (Also see 2nd Division Awards No. 816 and 916, which held such work not wrecking service).

Thus it is clear your Board has held that where there is no wreck or derailment involved, (e) of Rule 7 is **not** applicable, and that under such circumstances, paragraph (a) of Rule 7 is applicable, and that all time traveling and waiting, except on rest days and holidays, is payable at the straight time rate.

IN CONCLUSION

1. This claim is now barred by Article V(c) of the agreement of August 21, 1954, because not timely progressed to your Board, and should therefore be dismissed.

2. In the alternative, the claim is without merit and without support under the shop crafts' agreement, and should be denied.

3. The identical question here in issue has already been decided by your Board in Award No. 1971, involving the same parties to the instant dispute, contrary to the contentions of the employes and, for this additional reason, 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.

There is substantial agreement between the parties on the facts underlying this claim. Claimants were members of the wrecking crew. On claim date they were sent with the wrecker to change out the truck of a car that had broken roller bearings and flat wheels.

They were paid straight time for the periods of waiting and traveling under paragraph (a) of Rule 7. The employes contend that paragraph (e) of Rule 7 is the proper rule and demand the overtime pay which the rule provides.

During the progress of the claim, the designated officer of the carrier on May 23, 1955 wrote the employes' representative a letter in which the "claim for additional compensation is respectfully declined **** although **** if you so desire we have no objection to holding this case in abeyance **** until **** award **** in **** Docket No. 1821 MP-CM." Following this letter, another conference was held August 3, 1955, correspondence was exchanged, and some additional payments were agreed to and were made following October 12, 1955.

The carrier's first defense to this claim is that it is barred by Article V of the Agreement of October 21, 1954, which requires in substance that claims shall be barred unless within nine (9) months from the date of the officer's decision, proceedings are instituted.

Under the facts at hand this Board holds that the present claim is not barred by Article V. The general rule is that such contractual time limitation provisions should be strictly construed, in the interests of liquidating doubtful disputes and providing for early determination of all others.

However, the decision of the highest designated officer should not be equivocal or uncertain in its finality. The mere use of the word "decline" when coupled with an alternative, such as "holding this case in abeyance" is insufficient. The proposed alternative robs the declination of its decisiveness. Just as partial payment, conferences, and the application of a new award to a pending matter, all tend to show that the matter was still in progress and a final decision had not been reached.

The employes filed the instant claim within nine (9) months after November 7, 1955, on which date the highest designated officer expressed his final determination, and declined further conference.

On the merits of the instant case, the record discloses that the parties are divided on the question of what kind of work was done by the claimants. Award 1971 provided pay at straight time under Rule 7 (a) to employes who were reguarly assigned carmen, who were also assigned members of the crew of a wrecker, for their waiting and traveling time when sent out with the derrick to load stationary boilers.

The employes here concede that the car which had been set out with bearing and wheel trouble was not derailed, but urge that because it was disabled, it obstructed traffic and required wrecking service. One step further in such reasoning would lead to the conclusion that every disabled car constitutes a wreck if a derrick is used on it. With this reasoning we cannot agree. Without attempting to describe all the multitude of possible circumstances which might constitute a wreck, we limit ourselves here to the narrower conclusion, that the present facts and conditions were not sufficient to be a wreck requiring wrecker service, such as should be paid under Rule 7 (e).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVIISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 11th day of June, 1957.