Award No. 2627
Docket No. 2468
2-AT&SF-CM-'57

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. 97, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY (Eastern Region)

DISPUTE: CLAIM OF EMPLOYES:

That The Atchison, Topeka & Santa Fe Railway System be ordered to compensate Carman W. Umbarger under the current agreement at the rate of time and one-half in lieu of straight time on August 18 and 19, 1955 for traveling between:

a. 6:30 P.M. to 7:30 P.M. from Newton, Kansas to Lindsberg, Kansas.

b. 8:30 P.M. to 9:00 P.M. from Lindsberg, Kansas to Abilene, Kansas.

c. 2:20 A.M. to 4:46 A.M. from Abilene, Kansas to Newton, Kansas.

EMPLOYES' STATEMENT OF FACTS: W. Umbarger, hereinafter referred to as the claimant, is regularly employed as a carman by The Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, at Newton, Kansas. The claimant is bulletined and assigned the working hours of 8:00 A.M. to 12:00 Noon, and 12:30 P.M. to 4:30 P.M., Monday through Friday, with rest days of Saturday and Sunday.

On August 18, 1955, Union Pacific Car No. 690768 was derailed at Abilene, Kansas. The claimant was instructed to load the Santa Fe storehouse truck with sufficient material to rerail the car as it was the opinion of the carrier that the wrecker derrick was not needed.

The claimant completed the loading of the carrier-owned truck at 6:30 P.M. and proceeded to the scene of the derailment. At 7:30 P.M. the claim-

Without prejudice to the carrier's position as to what constitutes wrecking service within the meaning of shop crafts' Rules Nos. 9(e) and 108, the carrier has, since the receipt of Second Division Award No. 1909, complied with the terms thereof to the extent that carmen who, are regularly assigned members of a wrecking crew and who have performed rerailing service under similar circumstances, have been compensated under the provisions of shop crafts' Rule No. 9(e); however, as has been previously pointed out by the carrier, the claimant, W. N. Umbarger is not a regular assigned member of the Newton, Kansas wrecking crew.

The carrier has definitely shown that:

1. The wrecking derrick and auxiliary cars or the equivalent thereof were neither required nor needed to accomplish the work involved in the instant dispute.

2. The claimant, W. N. Umbarger, was not a regular assigned member of the Newton, Kansas wrecking crew, therefore, was not entitled to compensation under shop crafts' Rule 9(e).

In conclusion, the carrier reiterates that the employes' claim in the instant dispute is not only wholly without schedule support or merit, but is furthermore a clear attempt to obtain by an award of the National Railroad Adjustment Board something over and above that provided for in the agreement. The claim should be denied in its entirety.

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 the dispute were given due notice of hearing thereon.

Claimant asserts a claim for overtime rate while engaged in travel, relying upon Rule 9(e) reading:

"Rule 9(e). **Wrecking Service** will be paid for under this rule, except that all time paid for working, waiting or **traveling** on Sundays and holidays and **on week days after the recognized straight-time hours at home station** will be paid for at rate of time and one-half." (Emphasis supplied.)

The carrier points out that claimant was not a regularly-assigned member of a wrecking crew and, by practice, such work as he performed has been considered emergency road service. It further contends that Rule 9(e), quoted above, applies only when wrecking crews are actually called out for wrecking service, and that the case, at hand, is to be governed by Rule 9(a) which provides for straight time rate while a non-crew member travels in emergency road work.

This Division in its Award 1909, involving the same parties, determined that the phrase "wrecking service" as used in Rule 9(e) includes rerailing

service not involving the use of the wrecking outfit. It is true that the claimants in the cited award were bulletined as members of the regularly-assigned wrecking crew and this claimant was not so assigned. The distinction is immaterial as no line is drawn, based on assignment, in Rule 9(e) which relates to the subject of compensation while engaged in wrecking service. Having previously determined that work of the instant type constitutes wrecking service it follows that the compensation called for under Rule 9(e) should have been paid.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1957.