Award No. 2700
Docket No. 2476
2-CRI&P-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman R. E. Madden was unjustly dealt with when he was not called to accompany the Silvis, Illinois wrecking outfit on November 27, 1955.

2. That accordingly, the Carrier be ordered to compensate Carman Madden for 19¾ hours at the applicable time and one-half rate, the amount received by the regular assigned members of the Silvis wrecking crew.

EMPLOYES' STATEMENT OF FACTS: Carman R. E. Madden, hereinafter referred to as the claimant, is regularly assigned as carman at Silvis, Illinois, with assigned hours 7:00 A.M. to 3:30 P.M., Monday thru Friday. The claimant is regularly assigned by bulletin as a member of the Silvis wrecking crew. The claimant was assigned a vacation of ten consecutive work days, commencing November 14 to November 25, inclusive, 1955. The claimant reported to Car Foreman Plaschaert on November 26 that he was available for wrecking service call. At approximately 4:00 P.M., November 27, the regular assigned crew, except the claimant, was called to accompany the wrecking outfit to Eldon, Iowa.

The agreement effective October 16, 1948 and subsequently amended is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that within the meaning of Rule 114, the applicable part reading—

Rule 10 reads as follows:

"Rule 10. EQUALIZING TIME. When it becomes necessary for employees to work overtime, they will not be required to lay off during regular working hours to equalize time."

Inasmuch as the organization claims that Rule 10 is not applicable then the work week of the claimant, consisting of 5 work days and 2 rest days, was not up until end of tour of duty on Sunday, November 27, 1955, and he would not have been available for duty on the wrecker when it was called.

Without retreating from our position that no part of the agreement was violated in the instant case, in the event the Board should determine that the claim in this docket should be sustained and the claimant paid for the time claimed, the carrier, without prejudice to its position as to the merits of this claim, contends that any award made in favor of the claimant should be at the pro-rata rate. Your Board has held on numerous occasions that penalty rate for time not worked differs from time actually worked.

For the above reasons, we respectfully petition the Board to deny the claim in this case.

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.

The claimant is regularly assigned as carman at Silvis, Illinois, with assigned hours 7 A.M. to 3:30 P.M. Monday through Friday, Saturday and Sunday being claimant's rest days. The claimant is regularly assigned by Bulletin as a member of the Silvis Wrecking Crew. The claimant was assigned a vacation of ten consecutive work days commencing November 14 and ending November 25, 1955. On November 26, 1955, the claimant reported to car Foreman Plaschaert that he was available for wrecking service calls.

The employes state that on November 27, 1955, the regular assigned wrecking crew, except the claimant, was called to accompany the wrecking outfit to Eldon, Iowa.

The employes state that the carrier has violated Rule 114 of the effective agreement.

The carrier states that it has entered into an agreement with the shop crafts under date of March 12, 1948, relative to Rule 10, the equalizing of overtime, and that under this Memorandum of Agreement the claimant did not report his availability for such work to his local committee or his local representative.

The Board finds from the evidence submitted that the question to be decided in this claim is whether or not the claimant was under obligation to

protect the wrecking service assignment on his rest days and particularly on the rest days that immediately followed November 25, 1955, the date his vacation ended.

The Board finds that the claimant knew that he was obligated to protect the wrecking service assignment on his rest days that immediately followed his vacation because he reported to the car foreman that he was available for duty on and after November 26, 1955. He had no option of working or not working on his rest days. The Board finds that the Memorandum of Agreement dated March 12, 1948, and Rule 10 of the effective agreement is not applicable in this claim. Therefore, this claim will be sustained at the pro rata rate as the penalty is for time not worked.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1957.