Award No. 3190
Docket No. 2945
2-SP&S-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY (System Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when Carmen T. V. Volk, J. A. Fisher, H. Lawhorn and E. Hohensee were not called to accompany the wrecking outfit when it left Portland, Oregon, at 9:00 P. M. on January 1, 1957.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes eleven (11) hours each at the applicable time and one-half rate for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Spokane, Portland and Seattle Railway Co., hereinafter referred to as the carrier maintains at Portland, Oregon a wrecking outfit and regularly assigned wrecking crew composed of carmen of which Carmen Volk, Fisher, Lawhorne and Hohensee, hereinafter referred to as the claimants, are regularly assigned members thereof.

On January 1, 1957 the wrecking outfit was called and left Portland, Oregon at 9:00 P. M. to pick up a derailment at Albany, Oregon arriving at Albany at 3:30 A. M. on January 2, 1957. The only member of the regularly assigned wrecking crew called to accompany the outfit was Engineer C. A. Knutson.

The claimants left Portland by carrier automobile at 8:00 A. M. January 2, 1957 and arrived at Albany at 10:00 A. M. same date. Rerailed SP&S 11190 and were returned to Portland by automobile January 2, arriving at 2:30 P. M.

except that such employes are entitled to pay at the time and one-half rate under certain conditions. The pertinent part of Rule 10 (our Rule 6) is that it permits the Carrier to relieve a man from duty and permit him to go to bed for five or more hours. Such relief time is not to be paid for."

See also Award No. 1635 (Carmen vs CIL) in which Referee Carter denied claim for period during which wrecking crew members were relieved enroute.

The same language which appears in our Rule 6 was also interpreted in Referee Carter's findings in Award No. 1461 (Carmen vs GC&SF) which read in part as follows:

"The record shows that claimants were released for rest from 1:20 A. M. to 7 A. M., a period of five hours and forty minutes. That they occupied the bunk cars during this period is not disputed by the record . . . The mere fact that conditions required that the bunk cars be moved while occupied by claimants during a rest period does not bring them within Rule 9 (e). The facts meet all requirements of Rule 9 (b). The five hours and forty minutes here involved is a relief period within the purview of Rule 9 (b) and for which compensation does not accrue under the plain provisions of that rule. The interpretation sought by the claimants is a strained one that is not within the contemplation of the rule".

See also Award No. 1702 (Carmen vs CRI&P) involving a claim from members of the Des Moines wrecking crew who were not used to accompany the Des Moines wrecking outfit to Armourdale to clear a derailment at the latter point; the carrier having used carmen regularly employed at Armourdale to work with the wrecker at that point. The claim in that case was that the regular members of the Des Moines wrecking crew be paid what each would have earned if they had been called to accompany the wrecking outfit from Des Moines. Referee Wenke found that the carrier should have used members of the Des Moines wrecking crew instead of the carmen at Armourdale but did not allow the claim as presented. Instead, he disposed of it in the following manner:

"Having come to the conclusion that carrier violated its agreement with the carmen the question is, what should be allowed to these claimants in the way of compensation? What carrier here did was in violation of the scope of claimants' work rights. The penalty for work lost is the pro rata rate of the position, that is, the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. This would eliminate all traveling and waiting time but would entitle claimants to be paid at the rate of their position for all time paid Wrecking Engineer Frank Walters, either pro rata or overtime, while he worked with outfit No. 95008 at Armourdale. See Award 1362 to the same effect."

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.

Parties to said dispute were given due notice of hearing thereon.

Rule 4 of the carmens' special rules provides that "a sufficient number of the regularly assigned crew will accompany the outfit", when called for derailments outside yard limits. In this case only the engineer accompanied the wrecker and other crew members were transported by automobile the next morning to the scene of the derailment. That action is not in conformity with the clear language of the rule and we have no authority to change it.

With respect to part 2 of the claim, the carrier asserts that, if sent with the wrecker, claimants would have been relieved from duty and allowed to go to bed from 9:00 P. M. to 8:00 A. M. as permitted by Rule 6. The word "if" in the rule and in that contention by the carrier shows that it is entirely conjecture. We decline to sustain such an affirmative defense solely on conjecture.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1959.