

Award No. 3574

Docket No. 3145

2-CofG-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the controlling Agreement Derrick Engineer D. W. McCarley, Derrick Fireman H. H. Burch, Groundmen O. D. Gilbert, R. W. Russell and E. E. Calhoun, and Carman Helper W. Wallace were improperly relieved between the hours of 3:00 A. M. and 8:00 A. M. on May 20, 1957, while in wrecking service at Jackson's Gap, Alabama by a made-up crew, and the work continued without interruption.

2. That the Carrier be ordered to additionally compensate the above named Carmen and Helper the difference between what they were paid and what they would have earned had they not been improperly relieved by said made-up crew.

EMPLOYES' STATEMENT OF FACTS: Carmen D. W. McCarley, H. H. Burch, O. D. Gilbert, R. W. Russell and E. E. Calhoun, regularly assigned members of the Columbus wrecking crew, and Carman Helper W. Wallace, hereinafter referred to as the claimants, were called about 7:00 A. M., Sunday, May 19, 1957 to accompany the wrecking outfit to Jackson's Gap, Alabama, where a freight train had piled up a considerable number of cars. The claimants traveled and worked until 3:00 A. M., Monday, May 20, 1957 at which time they were relieved by a made-up crew out of Columbus, Georgia composed of Car Foreman J. F. Spruiell, who was used as derrick engineer, Carmen Lee Stokes, L. L. Layfield, J. A. Brown, G. H. Riddle, Jr., and Carmen Helpers Sam Williams and Archie Randall who worked with the wrecking outfit until 8:00 A. M., at which time this made-up crew was relieved and returned to Columbus, and the regular crew (claimants) resumed work and worked until 6:30 A. M., Tuesday, May 21, 1957, with the exception of the regular engineer and fireman, who worked on for several more hours.

All the claimants were regularly assigned members of the Columbus wrecking crew, with the exception of the helper who had accompanied the wrecking outfit on numerous occasions in the past, and were used to working long hours to get a mainline opened up in such emergencies, and although they may have been tired, they were willing to continue and none of them requested to be relieved at the time in question.

"Rule 108 (a) of the parties' agreement, insofar as here material, provides: 'When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.'

This rule gives carrier the right to augment a wrecking crew with additional carmen, or members of any other class under the agreement, if the duties to be performed fall within the scope of their classification of work rule. Consequently, under this rule, carrier could have used either Carmen Luman or Cooper, as both were qualified to do the work.

The organization calls our attention to Rule 10 (b) and contends, because the need for this work arose during the hours of claimant's shift, that this rule gave him priority to the work over Cooper, who was regularly assigned to a later shift.

Rule 10 (b) provides:

'Overtime will be distributed equally among the employees of each shift by crafts, qualification of the employee to do the work to govern.'

If this rule had application we would be inclined to agree with the organization. However, we think Rule 10 (b) applies only to the distribution of overtime work as it arises in connection with work regularly assigned on any shift to any craft and being performed by the employees to whom it is assigned.

Consequently we find it has no application to emergency work, such as here, when it arises in connection with a wrecking crew. In view of the foregoing we find the claim to be without merit.

AWARD: Claim denied."

The claimants here, in fact, were not available because they were physically exhausted from long hours of extremely hard work. Had they been physically able to continue working, they would not have been relieved. The Board, being composed of practical railroad men, will fully understand the emergency situation here involved, and the necessity to relieve these claimants for rest.

The burden of proof rests squarely upon the shoulders of the petitioners. See Second Division Awards 2042, 1996, and others. Also see Third Division Awards 8172, 6402, 6379, 6378, 2676 (all Central of Georgia cases), and many others.

S U M M A R Y

Carrier has clearly demonstrated that the instant claim has absolutely no merit and 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.

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

At 5:30 A. M., on Sunday, May 19, 1957 Carrier's main line was entirely blocked near Jackson's Gap, Alabama due to a serious wreck. The regular wrecking crew at Columbus, Georgia (some 60 miles distant) was called at 5:45 A. M. on the same date and departed with the outfit at 7:40 A. M. — arriving at the accident at 10:30 A. M. The crew worked continuously until 3:00 A. M. the next day, May 20, when Carrier relieved it for five hours with a made-up crew of carmen which had been brought from Columbus. The regular crew was taken off pay during the rest period thus provided. It resumed working at 8:00 A. M. on May 20 and worked until 6:30 A. M. Tuesday, May 21, when the main line was opened for passage of trains. The regular engineer and fireman in the wreck crew worked four hours beyond 6:30 A. M. Thus it is apparent that over 21 hours elapsed between the time the regular crew was called and the time it was relieved. The crew then worked 22½ continuous hours after its rest period, while the fireman and engineer worked 26½ hours.

The Organization contends the Carrier violated Rule 111 by relieving the regularly assigned crew without pay, while continuing the work with the made-up crew. Petitioner concedes that under Rule 10 wrecking crews may be relieved for five or more hours without pay, provided certain other conditions not here pertinent are met. It is urged, however, that there is no agreement provision for the establishment of auxiliary crews to relieve the regularly assigned wrecking crew. It is contended that Rule 10 contemplates it is unnecessary for the work to be carried on during the period of relief. The Organization asserts that if it is necessary to carry on the work, the regularly assigned crew is entitled to perform it without being relieved, or to be compensated during time of relief if the work is performed by others. Finally, it is contended that the regularly assigned crew was not in need of rest and did not request it in the subject instance.

The Carrier replies that the regular crew was utterly exhausted and in need of rest at the time it was relieved, that there was much more work to be done after the rest period, that the claimants were properly relieved without pay as provided in Rule 10, that there was no violation of Rule 111, and that no agreement provision supports the claim for pay during the five hour period of rest.

The parties are agreed that the wreck near Jackson's Gap created an emergency situation. The Carrier called the regularly assigned crew at Columbus to accompany the wrecking outfit, in compliance with Rule 111. Rule 10 expressly provides that employes in emergency road service may be relieved for five hours or more without pay, provided certain other conditions not here pertinent are met. We do not think that Rule 111 fairly can be interpreted to have required the Carrier to defer further work on clearing up this emergency wreck while the regularly assigned crew was taking a five hour rest, nor do we think the language of the rule entitled the regular crew to remain under pay during this period of relief, simply because a made-up crew was working on the wreck during the interim.

Finally, we are unable to accept the Organization's apparent position that under the confronting facts the Carrier was obligated to keep the claimants on continuous duty for approximately 48 hours, or to pay them as if they

had been on duty for that length of time. Such a conclusion would discourage the provision of rest periods and therefore would be contrary to the intent of Rule 10, which is to provide a "a minimum rest period for men on assignments whereby proper rest could be secured to fit them for the continuation of tasks to which they are assigned." Award No. 154.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.