

Award No. 3897
Docket No. 3628
2-NYNH&H-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Carmen)**

**NEW YORK, NEW HAVEN &
HARTFORD RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the New York, New Haven and Hartford Railroad Company violated the current agreement governing the payment of wrecking crews, for wrecking service performed by the New Haven, Connecticut, wrecking crew while in wrecking service at Jewett City, Connecticut, from July 10, 1957 (11:30 P. M.) July 15, 1957 (12:30 P. M.) when relieved.
2. That accordingly, the Carrier be ordered to additionally compensate the members of the New Haven wrecking crew the difference between what they were paid and the amount claimed as follows:

A. DeFrancisco	8 hrs. @ 1½	—	64.5 hrs. @ 2 time
T. Aquilla	" "	" "	" "
D. Fitzgerald	" "	" "	" "
T. Pepe	" "	" "	" "
A. Raccio	" "	" "	" "
R. Pierce	" "	" "	" "
H. Albanese	" "	" "	" "
P. J. Early	" "	" "	" "
N. Lambrano	" "	" "	" "
T. Bohan	" "	" "	" "
C. McGugh	16 hrs. @ 1½	—	56.5 hrs. @ 2 time
P. Gilmore	" "	" "	" "
W. Savelli	" "	" "	" "
K. Sennett	" "	" "	" "
C. Windhorst	8 hrs. @ 1½	—	28.5 hrs. @ 2 time

EMPLOYES' STATEMENT OF FACTS: At 11:30 P. M. on July 10, 1957, the New York, New Haven and Hartford Railroad Company, hereinafter referred to as the carrier, called out the New Haven, Connecticut, Tool Train for wrecking service at Jewett City, Connecticut. This tool train remained in wrecking service at Jewett City, Connecticut, from 11:30 P. M. on July 10, 1957, through July 15, 1957, when it was returned to New Haven, Connecticut, its home terminal, and the crew released at 12:30 P. M.

On Thursday, July 11, the crew was returned to New Haven, Connecticut by truck, and put on rest at 10:30 P. M. with orders to report on July 12, at 4:00 A. M., Friday.

On reporting at 4:00 A. M. on the 12th, the crew was transported back to Jewett City, by truck and/or other conveyance. On Friday night, July 12, the crew was again separated from the Tool Train and transported to New Haven and put on rest at 8:30 P. M. with orders to report on Saturday, July 13 at 4:00 A. M. On reporting at 4:00 A. M. on Saturday they were transported to the site of the wreck, by truck and/or other conveyance. On Saturday night, July 13, they were again separated from the Tool Train and returned to New Haven, where they were put on rest at 10:30 P. M. with orders to report on Sunday, the 14th at 4:00 A. M. On reporting at 4:00 A. M. Sunday the 14th, they were again transported back to the site of the wreck and were continued in wrecking service until the wrecking service was completed and the Tool Train was returned to New Haven on July 15 and the crew relieved at 12:30 P. M.

This dispute was handled with carrier officers including the highest officer of the carrier designated to handle grievances, with the result he declined to adjust it.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the claimants were in continuous wrecking service from 11:30 P. M. on July 10, 1957 to 12:30 P. M. on July 15, 1957, and were subjected to a shortage of money in their pay checks, covering the pay period including July 10 through July 15, 1957.

Rule 110 captioned "WRECKING CREWS" reading in pertinent part as follows:

"Regularly assigned wrecking crews, including engineers, will be composed of carmen, and will be paid for such service under Rule 8.

Meals and lodging will be provided by the Company while crews are on duty in wrecking service."

provides that the claimants who are regularly assigned to the New Haven wrecking crew will be paid under the provisions of Rule 8, reading as follows:

"Wrecking service employes called outside of regular working hours will have their time computed starting twenty (20) minutes ahead of the time at which they actually report. All time

The claimants here were paid the full measure of compensation required by the rule. In fact, they were paid double time in several instances for traveling to their homes. No deprivation of their contractual rights has occurred. This claim must be denied in its entirety.

In summation carrier has shown:

1. That the instant claim is progressed for an alleged violation of Rule 111. The penalty therefore is requested under Rule 8.
2. That the claim for compensation is limited solely to pay for time off duty and on rest at home terminal. The question of continuous double time is res adjudicata and should be dismissed.
3. That the claim for compensation for time off duty and on rest is not supported by the language of the Rule 8.
4. That Rule 111, upon which the claim is premised, is essentially a consist rule which has no bearing on the instant dispute, and has not been violated.
5. Claimants have received the full measure of compensation required by the agreement.

The claim is without 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.

Two interrelated questions are here presented. These are:

First, Whether time spent at rest during the course of the performance of a particular wrecking service performed outside yard limits is compensable under Rule 8 of the controlling agreement notwithstanding that during the assignment the men were removed to their homes some 70 miles distant from the wreck for rest.

Second, Whether the men are entitled to double time for all time actually worked after the first 16 hours or is the continuity broken by the rest period so as to require a new computation pursuant to the terms of Rule 8.

I

It is conceded by both of the parties that if the rest period had been at the scene of the wreck the time spent on rest would have been under Rule 8 compensable. The argument is that a reading of Rules 110, 111

and 8 together results in a conclusion that rest time is compensable regardless of whether taken at the scene or at home. Rule 111 provides that "the regularly assigned crew will accompany the outfit." Rule 110 provides in pertinent part that "meals and lodging will be provided by the company while crews are on duty in wrecking service". This latter rule is said to recognize that the men are on duty while engaged in wrecking service. Rule 110 also requires the Carrier to provide meals and lodging while the crews are on duty in wrecking service.

Recognizing that wrecking service is performed as continuous mission or project requiring extraordinary expenditure of effort and having in mind that the several rules recognize this characteristic of continuity we fail to see how there can be an effective interruption by reason of the expedient of removing the men to their homes. It is not necessary to decide whether the men have a right to stay with the outfit. It is sufficient to decide that the period of rest is part of the wrecking service whether it is spent at the scene or at home.

II

Rule 8 formerly provided that all time actually worked continuously beyond sixteen hours will be paid for at double time. Now the language has been changed so as to read "All service in excess of * * *" (Emphasis ours.) It is a fundamental rule of construction that every change of wording imports a change of meaning. The Carrier's argument that double time after the first 16 hours does not accrue would have more force under the former wording. The wording of the rule that all service in excess of 16 hours is compensable at a double time basis seems clearly to contemplate **all** service during the particular wrecking assignment.

Awards 1131 and 2706 although they construe the rule in question do not control this controversy. They merely hold that Rule 8 does not require the payment of double time while the men are on rest. The present question seems to be one of first impression.

Our conclusion that under the basic agreement wrecking service is continuous and that Rule 8 requires compensation to be paid at the rate of double time after the first 16 hours except rest periods is also supported by the Perry rulings which are attached to the employees submission.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1961.