

Award No. 4152

Docket No. 3925

2-SLSW-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

ST. LOUIS SOUTHWESTERN RAILWAY LINES

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the rules of the controlling agreement the Carrier improperly compensated members of the Pine Bluff Wrecking Crew composed of the following Carmen:

F. A. Koonce, Engineer
J. W. Carter, Assistant Engineer
D. A. Robinson, Groundman
J. R. Lee, Groundman
A. Helvey, Groundman
H. E. Gatlin, Groundman
N. Funderburg, Groundman
R. E. Lee, Groundman

when they were denied compensation between the hours 8:20 P. M., September 30, 1959 and 7:00 A. M., October 1, 1959.

2. That accordingly the Carrier be ordered to compensate the aforesaid members of the wrecking crew for the aforementioned hours at the time and one-half rate or a total of 16 hours at straight time rate.

EMPLOYEES' STATEMENT OF FACTS: The St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier maintains at Pine Bluff, Arkansas, a complete wrecker outfit and crew, composed of the aforementioned regular assigned members, hereinafter referred to as the claimants. The regular assigned hours of all claimants for the period is dispute were from 7:00 A. M. to 12:00 Noon and 12:30 P. M. to 3:30 P. M., with Saturday and Sunday regularly assigned rest days. On the evening of September 25, 1959, Train No. FX18, northbound was involved in a derailment at Mile Post 133, near Gibson, Arkansas, located approximately 134 miles from Pine Bluff.

McDoel and that they should be paid from 4:50 P. M. on June 22, 1951, to 6:25 A. M. on June 23, 1951.

We think carrier acted within its managerial prerogative in tying up the crew at Orleans at 6:50 P. M. on June 21. The hospital train was not ready to move at that time. Claimants contend it could have been made ready in an hour. Carrier asserts it actually required two and one-half hours. The conditions of the power units and cars in the train and the inherent dangers involved certainly justified the carrier in moving this train into Lafayette during daylight hours when conditions could be better observed.

The claim for pay for the lay-over period at McDoel cannot be sustained. There is evidence that there was no crew at McDoel who held contractual rights to operate this train from McDoel to Lafayette. But even if this could be construed as negligence on the part of the carrier, nevertheless other considerations justify the lay-over at McDoel. It had taken three hours and fifty minutes to move the train from Orleans to McDoel, a distance of forty miles. At the same rate of progress, it would have taken almost nine hours to move from McDoel to Lafayette. We think the carrier was justified in not commencing the trip at 4:50 P. M. on June 22.

It is true that this train movement was made with a minimum of difficulties. It made the trip McDoel to Lafayette in five hours and twenty minutes, a better time than was expected. But carrier was required to make its decision on the situation as it appeared before the trip was made, not on the facts as they subsequently proved to be. A carrier is required to look out for the safety of its property and its employes. An estimation of time for moving a train such as the one here involved cannot be made with accuracy. As long as there is a reasonable basis for the judgment exercised, no basis for a claim exists."

III

It is clearly evident this claim is not supported by the rules and carrier submits that it should be denied.

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.

It is the carrier's contention that the condition of damaged equipment in the hospital train was such that it was necessary to travel by daylight and observe its condition; however the train was moved by a transportation department crew and not by the wrecking crew, which had completed its work at the wreck.

This Division has held in prior awards that provisions like Rule 7-2 for relief from duty on the road relate to actual working periods and not to time waiting or traveling after the work has been completed. Awards 790, 1028, 1048, 1078 and 1971.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.