Award No. 4196
Docket No. 3894
2-SP&S-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

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

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY (System Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when they relieved Carmen D. W. Campbell, Theodore Volk, Hudson Lawhorn and E. A. Hohensee from duty from 4 P. M., October 20, 1959, to 4 A. M., October 21, 1959.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes twelve (12) hours at the applicable time and one-half rate for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Spokane, Portland and Seattle Railway Company, hereinafter referred to as the carrier, maintains at Portland, Oregon, a wrecking crew outfit and regularly assigned wrecking crew composed of carmen of which Carmen Campbell, Volk, Lawhorn and Hohensee, hereinafter referred to as the claimants, are regularly assigned members thereof. They are regularly assigned to the Portland Car Repair Tracks with hours of service from 7:30 A. M. to 4 P. M.

The claimants were called for a derailment at MP 89.1 and arrived at the scene of the derailment with the outfit at approximately 4:45 A. M., October 21, 1959. The claimants were relieved from duty at 4 P. M., October 20, 1959, which was their regular quitting time at home station while enroute to scene of derailment until 4:45 A. M., October 21, 1959, when they arrived at the scene of derailment. The rest period was given during the time the wrecking crew was traveling.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make a satisfactory settlement.

POSITION OF EMPLOYES: It is submitted that Rule 12 of the controlling agreement, reading:

In the instant case claimants were used in precise conformity with the first paragraph of Referee Whiting's findings, thereby removing the conjecture to which he refers in the second paragraph of his findings.

Rule 12 of the current shop crafts agreement on this property is somewhat of a standard rule and appears in many shop craft agreements. It appears to have had its genesis in Decision 222 of the United States Labor Board although the respondent carrier was not a party to that particular decision.

Early in the history of your honorable Board, Referee Devaney in interpreting a similar rule in Award 154 had this to say:

> "We believe it to be a fact that the five-hour provision in Rule 10 and 11 was originally incorporated for the purpose of providing a minimum rest period for men on assignments whereby proper rest could be secured to fit them for the continuation of the tasks to which they are assigned."

Again in Award 360 your Board found that:

> "Rule 7(b) was obviously for the purpose of requiring a rest period where necessary and for that purpose only."

It appears obvious that it would be just as necessary to provide a rest period for claimants after having performed service on their regular assignment at Portland and prior to again starting work at the scene of the derailment as it would be after they had subsequently performed service at the latter point.

In summary, your honorable Board has held that the schedule provision similar to our Rule 12(b) is "for the purpose of **requiring a rest period** where necessary"; and Respondent has shown that claimants were, in fact, relieved from duty for a period in excess of five hours for the sole purpose of providing such a rest period after their day's work on their regular assignments "to fit them for the continuation of the tasks to which they were assigned."

The applicable schedule rule, as interpreted by your Board, having been strictly complied with, petitioner's claim is without merit and must 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 waived right of appearance at hearing thereon.

The Claimants, D. W. Campbell, E. A. Hohensee, H. Lawhorn, and T. Volk have been employed as carmen at the Carrier's Car Department, Portland, Oregon, with regular working hours from 7:30 A.M. to 4:00 P.M.

In addition, they comprised the regular Portland Division wrecking crew at the time here relevant. On October 20, 1959, they were assigned to accompany the Portland Division wrecking outfit for the purpose of assisting the Vancouver Division wrecking crew in clearing a derailment. They left Portland at 3:30 P. M. After the relief train had departed, they were permitted to go to bed from 4:00 P. M., October 20th to 4:00 A. M., October 21st. At the latter time, they relieved the wrecking crew which had been working at the scene of the derailment up to that time. They received no compensation for the aforementioned 12-hour period from 4:00 P. M. to 4:00 A. M.

They filed the instant grievance in which they requested twelve hours' pay at the rate of time and one-half for said period. The Carrier denied the grievance.

1. The Carrier argues that the claim under consideration is barred under Rule 37(c) of the applicable labor agreement. This Rule provides, as far as pertinent, that proceedings before the appropriate Division of this Board must be instituted within nine months from the date of the decision of the Carrier's highest officer designated to handle grievances. It is undisputed that the Carrier's highest designated officer (General Manager) declined the instant claim on February 26, 1960, and that the Organization filed a notice, dated November 23, 1960, of its intention to submit the instant grievance to this Division. Our records show that said notice was received by us on the same day. Accordingly, the proceedings were instituted by the Organization before us within the contractual time limit of nine months. As a result, we find that the Carrier's procedural objection is without merit.

2. The substantive question this case presents is whether the Claimants are entitled to compensation for the traveling time under consideration in accordance with Paragraph (a) of Rule 12 of the labor agreement or whether the Carrier is released from such payment under Paragraph (b) thereof. Rule 12 reads, as far as relevant, as follows:

> "(a) Emergency Service Away from Shop: An employe regularly assigned to work at a shop . . . or inspection point, when called for emergency road work away from such point will be paid from the time ordered to leave home station until his return, for all time worked in accordance with the practice at home station; straight time rate for all time waiting or traveling during straight time hours and time and one-half for all time waiting or traveling during overtime hours.
>
> "Wrecking: Wrecking service employes will be paid under this rule, except that . . . all time working, waiting or traveling on work days after the recognized straight time hours at home station will also be paid for at rate of time and one-half.
>
> "(b) If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief time will not be paid for provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station . . ."

The Claimants contend (i) that, under Paragraph (a), wrecking service employes who leave their home station to perform work cannot rightfully be

relieved from duty and denied pay for the time elapsing between their departure from the home station and the start of wrecking work, and (ii) that Paragraph (b) was intended only to provide a minimum rest period of five hours for employes on designated assignments but not to avoid payment of traveling time by the Carrier. Contrary thereto, the Carrier asserts that Paragraph (b) contains no such qualification or limitation.

A careful reading of the **entire** Rule 12 has convinced us that it deals with two different situations. Paragraph (a) provides that wrecking service employes will be paid at the straight time or overtime rates, as the case may be, for all hours worked during the period they are ordered to leave their home station until they return thereto as well as for all waiting or traveling time. Thus, the Paragraph does not limit compensation to the hours actually spent in productive wrecking work but also requires compensation for all waiting or traveling time given by the employes to the Carrier in connection with wrecking service even though such time may be spent in idleness. On the other hand, Paragraph (b) prescribes that the employes are not entitled to compensation if they are "relieved from duty" for five or more hours. It is self-evident that the employes are "not relieved from duty" but are under the Carrier's control and supervision while traveling upon its instructions to or from the scene of a derailment. Such traveling time is compelled by the circumstances. It is neither a rest period within the contemplation of Paragraph (b) nor can the Carrier rightfully convert it into a rest period. See: Awards 154 and 360 of the Second Division. The law of labor relations is well settled that, in case alternative interpretations of a contractual provision are possible, one of which would give effect to another provision of the labor agreement while the other would render the other provision ineffective, the interpretation which would give effect to **all** provisions will generally prevail. See: Frank Elkouri and Edna A. Elkouri, **How Arbitration Works**, Revised Ed., Washington, D. C., 1960, BNA, Inc., p. 208 and cases cited therein; Clarence M. Updegraff and Whitley P. McCoy, **Arbitration of Labor Disputes**, Second Ed., Washington, D. C., BNA, Inc., 1961, p. 225, B (1). This principle is founded upon the general presumption that the parties do not carefully write into a labor agreement words or provisions intended to have no effect. The Carrier's construction of Paragraph (b) of Rule 12 would deprive Paragraph (a) thereof of its vitality as far as waiting or traveling time within the contemplation of the latter Paragraph is concerned and thus would run counter to the above stated principle.

In summary we hold that the Carrier violated Paragraph (a) of Rule 12 in the instant case and that the Claimants are entitled to the compensation requested by them.

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 May, 1963.