

Award No. 4509

Docket No. 4343

2-SP&S-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when 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 Carmen C. B. Ramey, C. Hunt, T. Volk and H. Lawhorn were not called to accompany the wrecking outfit when it left Portland, Oregon at 11:20 P. M. on November 16, 1961.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes one hour each at the straight time rate and eight hours and ten minutes at time and one-half rate.

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

On November 16, 1961 the wrecking outfit was called and left Portland at 11:20 P. M. to pick up a derailment at Salem, Oregon, arriving at Salem at 3:35 A. M. on November 17, 1961. The only member of the regularly assigned wreck crew called to accompany the outfit was the wrecking engineer.

The claimants left Portland by carrier automobile at 9:30 A. M. November 17, 1961 and arrived at Salem at 11:00 A. M., same date. Rerailed CMO 21982 and were returned to Portland by automobile November 17th, arriving at 5:30 P. M.

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 satisfactory settlement. The agreement effective November 16, 1957 is controlling.

of the parties when they wrote the language. It fails also to apply a cardinal tenet of contract construction; namely, the rule-of-reason principle that, if alternate constructions are possible, the more reasonable one should be selected. That is, it fails to apply the principle that, if possible, contract language should not be interpreted so as to achieve a result that might be called peculiar or absurd."

Finally, the claim here is without support under the controlling working agreement for another reason. It seeks payment to claimants at the punitive overtime rate for a period during which they performed no service. Not only is there no support for such a claim in the controlling agreement, but your board has consistently held such a claim is without merit. See, for example, Awards 2802, 2927, 2956, 1771, 1772.

All data in support of the respondent's position has been submitted to the petitioner and made a part of the particular question here in dispute.

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 employees 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:

Claimants are the regularly assigned members of Carrier's wrecking crew at Portland, Oregon with regular hours of duty from 7:30 A. M. to 4:00 P. M.

On November 16, 1961, the wrecking outfit at Portland was called to Salem, Oregon to pick up a derailment that had occurred at Bush, Oregon, which is within the Salem yard limits.

The outfit departed Portland at 11:20 P. M., accompanied by the engineer only. It arrived at Salem at 3:35 A. M., November 17, 1961.

Claimants were transported to Salem by automobile, leaving Portland at 9:30 A. M., November 17, 1961. They accomplished the rerailling and were returned to Portland that evening.

Rule 67 of the controlling agreement reads in part as follows:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within the yard limits, sufficient carmen will be used to perform the work."

Rule 12 of the controlling agreement reads in pertinent parts as follows:

"Wrecking: Wrecking service employes will be paid under this rule, except that all time working, waiting or travelling on their assigned rest days and on holidays, will be paid at the rate of time and one-half and all time working, waiting or travelling 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 required to leave home station during overtime hours employe will be allowed one hour preparatory time at straight time rate, * * *."

Claimants are seeking compensation for one hour at the straight time rate for preparatory time and eight hours and ten minutes at the time and one-half rate on the ground that they were entitled, under the agreement, to accompany the outfit when it left Portland.

It is Carrier's contention that there is nothing in the agreement which precludes Carrier from transferring its wrecking outfit from one point to another without having the members of the wrecking crew accompany it, and further that none of the Claimants was called, within the meaning of Rule 67.

It is true that none of the Claimants was called, and that is what they are protesting. They maintain that the Rule required that they be called to accompany the outfit.

Carrier seeks to call this a transfer of equipment from Portland to Salem, but it is clear from this record that the outfit was called for use at the Bush derailment.

Under the Rules of the controlling agreement and former Awards of this Division, it is abundantly clear that this and similar Rules considered by us require that these Claimants should have accompanied the wrecking outfit when it left Portland.

AWARD

Claim 1: Sustained.

Claim 2: Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.