

Award No. 4573
Docket No. 4330
2-B&O-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. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That under the current agreement, the Carrier refused payment to the Cumberland wreck crew members when they were held waiting at Hancock, Maryland, March 13 and 14, 1961.

(b) Accordingly, the Carrier be ordered to compensate Carmen:

W. A. Leyh
D. B. Brinkman
W. T. Howser
E. Bierman
R. A. Lewis
G. E. Zollner

C. R. Teets
A. T. Rice, Jr.
W. P. Sisk
W. F. Leyh
F. E. Devore

three (3) hours, at time and one-half rate, and six (6) hours at the double time rate of pay, each, for March 13 and 14, 1961, for service rendered, on each date.

EMPLOYEES' STATEMENT OF FACTS: On March 13, 1961, the Cumberland relief train was clearing up wrecked cars at the scene of derailment at Hancock, Maryland.

The relief train was pulled into the siding, next to No. 1 main track, at Hancock, Maryland, at 8:00 P. M., on March 13, 1961. It returned to the scene of the derailment and resumed work at 5:00 A. M., March 15, 1961.

Hancock is located approximately one (1) hours travel time from Cumberland.

The wreck crew was not paid for the time from 8:00 P. M., March 13, 1961, to 5:00 A. M., March 14, 1961, nor from 8:00 P. M., March 14, 1961, to 5:00 A. M., March 15, 1961.

made a formal, or informal, complaint as to the condition of the car at any time prior to the introduction of this claim. There was sufficient hot water available in the adjacent car, adequate to take care of the claimants' needs. It had two tanks with a capacity of approximately 300 gallons each. Blankets were issued to the men, new, in 1960. It was not customary to issue sheets. The car was equipped with two oil stoves that were properly ventilated to the atmosphere and with toilet facilities that were also properly ventilated to the atmosphere. At the time of this claim the car in question was in a sanitary condition.

In a word, the carrier submits that on the dates for which claim has been made sleeping accommodations were provided and the claimants were permitted to go to bed.

Under An Application Of The Rule At Issue There Is No Merit To The Claim For Continuous Time:

Rule 7 of the agreement provides in part that:

"Hourly rated employees sent out on the road with wreck train outfit, if released at the wreck for a period of 5 hours or more and camp cars or other facilities are provided and such employees are permitted to go to bed, such time will be deducted. * * *"

In this case the claimant carmen were properly compensated. They were not paid for, and they could not properly be paid for, the time from 8:00 P. M., March 13, 1961, to 5:00 A. M., March 14, 1961, nor from 8:00 P. M., March 14, 1961, to 5:00 A. M., March 15, 1961. This represented the period of time they were actually released from duty. The time they were so released was properly deductible under an application and interpretation of the working agreement. The claimant carmen are not now properly entitled to claim continuous time for this period.

The carrier submits that the wage claim at parts 1 and 2 is without merit.

The carrier respectfully requests that this board act to deny this claim 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 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 were given due notice of hearing thereon.

Claimants are members of Carrier's Cumberland wrecking crew who were called to Hancock, Md., to work on a nearby wreck, on dates of March 13, 14, and 15, 1961. At 8:00 P. M. on March 13 and 14, the relief train was placed on a siding at Hancock and Claimants spent these nights in quarters provided on the relief train until resuming work at 5:00 A. M., the following morning.

Rule 7 of the controlling agreement has an agreed to interpretation reading in part as follows:

“* * * * *

Hourly rated employees sent out on the road with wreck train outfit, if released at the wreck for a period of 5 hours or more and camp cars or other facilities are provided and such employees are permitted to go to bed, such time will be deducted. * * *.”

Carrier asserts that the Claimants were relieved and permitted to go to bed for more than five hours in the car provided, and that this time was properly deducted.

Claimants contend that they were not relieved, and that the time spent in the car was waiting time, and should be so compensated.

Claimants have advanced another argument concerning the inadequacy of the facilities provided, but our disposition of this dispute makes it unnecessary for us to resolve that point or the Carrier's objection to our consideration of Exhibit B-8 attached to the Employees' rebuttal statement:

There is a factual dispute in this record as to whether the Claimants were properly relieved within the Rule for more than five hours. We have considered the whole record, the arguments and statements of the parties, and all of the circumstances surrounding this factual difference, and conclude that Claimants were not advised that they were relieved, and thus were not properly relieved under the Rule and its agreed to interpretation.

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 24th day of July 1964.