Award No. 4908
Docket No. 4835
2-MP-CM-'66

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. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 7(e) when they paid the straight time rate for traveling while in wrecking service to Carman Dan Alaniz.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Carman Dan Alaniz the difference between the straight time rate and punitive rate between the hours of 5:30 p.m. and 7:30 p.m., April 1, 1964.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains what is called a "Cline Truck" at Houston, Texas. This truck is designed for road work and wrecking service and is equipped with wench and hoist and used to make repairs to cars on line of road and perform rerailing in wrecking service.

On April 1, 1964, Carman R. T. Stephenson and Carman Dan Alaniz, hereinafter referred to as the claimant, were sent from Houston, Texas to Willis, Texas to put U.P. 184495 back on center and make some minor repairs. After this work was completed they reported to the agent at Willis for further instructions and he advised them S.P. 364193 was derailed and that the dispatcher wanted them to rerail this car. Carman Stephenson and the claimant rerailed S.P. 364193, as instructed, finishing the job at 5:30 p.m., April 1, 1964, at which time they departed Willis for Houston, Texas, arriving there at 7:30 p.m.

Their assignment at Willis, Texas consisted of road work until the completion of putting car U.P. 184495 back on center and making minor repairs, however, following their instructions to rerail car S.P. 364193 they were then and there in wrecking service as wreck (derailment) had occurred.

On arrival back in Houston Carman Stephenson and the claimant filled

7(a). The carrier does maintain wreckers at a number of points and does have regularly assigned wrecking crews at such points. Such wrecking crews are composed of carmen and helpers in accordance with Rule 119. Your board will note that Rule 119(a) requires that such crews will be paid under Rule 7. When a regularly assigned wrecking crew is called to accompany the outfit composed of the wrecker, bunk cars and supporting equipment, to clear a wreck or derailment the members of the crew are paid in accordance with Rule 7(e).

Your board has had occasion to consider the question of the applicable rule where the outfit has been used for other than a wreck or derailment. In Award 1971, the Kansas City outfit was used to load boilers at Falls City, Nebraska, Your board held that the claimants were entitled to additional pay as waiting time, but clearly held that such waiting time and also traveling time involved on a work day should be paid at the straight time rate in accordance with Rule 7(a).

In Award 2490 the outfit at Dupo, Illinois was sent to a siding on the Illinois Division to change out the truck of a freight car that had broken roller bearing and flat wheels. Your board again held that waiting and traveling time on a work day for the claimants should be allowed at the straight time rate in accordance with paragraph (a) of Rule 7.

Wrecking service employes who accompany the outfit to a wreck or derailment normally are required to live in bunk cars and frequently are required to work long and irregular hours. The rules recognize these facts and allow wrecking service employes under these circumstances additional compensation in the form of waiting and traveling time outside of regular hours on a work day at the time and one-half rate.

The claimant, on the other hand, is a carman regularly assigned to the repair track at Houston. He is not a member of the regularly assigned wrecking crew. The claimant does frequently make emergency road trips to repair freight cars and is used to rerail cars where heavy equipment such as the outfit is not required.

Such duties do not entail living in bunk cars nor working long and irregular hours, and the work is generally, but not always, completed within the normal eight-hour working period. There is no justification for allowing claimant the additional compensation which is afforded wrecking service employes who accompany the outfit to wrecks and derailments.

Rule 7(a) clearly fits the claimant. He is an employe regularly assigned to work at the repair track at Houston and was called for emergency road work away from the repair track. Under such circumstances, the rule clearly provides that such employe will be allowed "straight time rate for all time waiting or traveling" on a work day. April 1, 1964, the date of claim was a work day for claimant. He was properly paid for the time spent traveling home after his regularly assigned hours at the straight time rate. It follows that the claim must be declined.

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.

Claimant and his co-worker were sent out on emergency road service, upon the completion of which they were assigned to the rerailing job. Their return to home point was from the rerailing assignment just as clearly as if they had returned home from the emergency road service and had then gone out again especially to do the rerailing.

This Division has long ruled that rerailing service performed by carmen is wrecking service within the meaning of their Agreement. In Award 1909 it said: "Thereunder we think rerailing is included in wrecking service. It is generally so regarded. Awards 1062, 1126, 1327." See also Awards 2627 and 4596.

In Award 2627 it said:

> "This Division in its Award 1909, involving the same parties, determined that the phrase 'wrecking service' as used in Rule 9(e) includes rerailing service not involving the use of the wrecking outfit. It is true that the claimants in the cited award were bulletined as members of the regularly-assigned wrecking crew and this claimant was not so assigned. The distinction is immaterial as no line is drawn, based on assignment, in Rule 9(e) which relates to the subject of compensation while engaged in wrecking service. Having previously determined that work of the instant type constitutes wrecking service it follows that the compensation called for under Rule 9(e) should have been paid."

For payment purposes Rule 7(e) in the Agreement applicable here likewise makes no distinction based on assignment. We conclude, therefore, that the claim should be sustained.

In reaching this conclusion we find it unnecessary to consider the statements concerning past practice which are annexed as exhibits to the Employes' Rebuttal, and to which the Carrier objects because they were not used in the proceedings on the property, and also because they properly constitute part of the Employes' case in chief, rather than rebuttal, and therefore come too late.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1966.

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