

Award No. 4927

Docket No. 4781

2-GN-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the members of the Great Falls Wrecking Crew were not compensated for time waiting, after completion of derailment on June 20, 1963;

2. And that accordingly, the Carrier be ordered to compensate Carmen Beryl Knapp, John Wlodarski, Roman Wlaznak, Caleb Hatler, W. J. Mahoney and Francisco Lucina for eight hours each, at the rate of time and one-half account of said violation.

EMPLOYES' STATEMENT OF FACTS: Carmen Beryl Knapp, John Wlodarski, Roman Wlaznak, Caleb Hatler, W. J. Mahoney and Francisco Lucina, hereinafter referred to as the claimants are employed by the Great Northern Ry. Co., hereinafter referred to as the carrier, in its car department facilities located at Great Falls, Montana. Four of the claimants, Knapp, Wlodarski, Wlaznak and Mahoney, are regularly assigned members of the wrecking crew. Claimants Lucina and Hatler were taken along on the derailment as additional members of the crew.

On this particular derailment the Great Falls wrecking crew, supplemented by two carmen from the overtime call list, was called at 2:30 A. M., Tuesday, June 18, 1963 for a derailment at Hobson, Montana. They left Great Falls at about 3:30 A. M. and arrived at the derailment, which was approximately one mile past Hobson, at about 7:30 A. M. The crew worked on the derailment until the mainline was cleared at 6 P. M. Wednesday, June 19, 1963. They were relieved from duty for rest at 8 P. M., that date. They resumed work at the derailment at 3 A. M., Thursday, June 20, 1963, cleared up the derailment and were moved into Hobson, Montana where they were tied up at 8 P. M.

In the instant dispute the train crew was tied up at 7:25 P. M. that night due to the 16-hour law. This fact is attested to by the conductor of the train in a letter to the local chairman of the carmen.

several company-owned vehicles immediately available at Hobson, and the trip could have been made in a few hours. Under the principle established by the Organization's claim in Second Division Award No. 4564, Carmen v. G.N., Referee Joseph M. McDonald, regularly assigned wrecking crews on this property must physically accompany the wrecking derrick outfit to wrecks or derailments, but there is no such requirement with respect to the return trips. Further evidence of this established principle can be found in a case similar to that involved in Award No. 4564; i.e., a case in which a regularly assigned wrecking crew did not physically accompany a wrecking derrick outfit to or from the scene of a derailment and claimed the schedule agreement gave them the right to ride with the outfit only on the outbound trip.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. It is the fundamental right of the carrier to relieve wrecking service employes for non-compensated rest periods in whatever manner is necessary or desirable, except as that freedom has been limited by law or some clear and unmistakable language in the collective bargaining agreement.
2. The organization has the burden of proving that the carrier acted in violation of the schedule agreement when it relieved the claimant wrecking crew for rest on the night in question. It has failed to carry this burden.
3. Schedule Rule 22(c), cited by the organization as the only contractual basis for its claim, does not contain the restrictive language which it would have to contain before the instant claim could be sustained.
4. The organization has glossed over or ignored several of the facts which clearly demonstrate the carrier's literal compliance with Rule 22(c).
5. This board has no authority to rewrite Rule 22(c) under the guise of interpretation. It must limit its function to applying the rule in accordance with the plain meaning of the language contained therein. The plain meaning of that language clearly allowed the carrier to relieve the claimants for rest.
6. This board has denied other claims similar to the one presented in the instant case.
7. The rerailling and other work procedures following in the instant case were logical and expedient and conformed with past practice.
8. The organization's case is replete with contradictions and inconsistencies.

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.

Claimants were members of the Great Falls Wrecking Crew, Great Falls, Montana, and were called at 2:30 A. M. Tuesday, June 19, 1963, for a derailment of twenty freight cars one mile southeast of Hobson, Montana, arriving there at 7:30 A. M. The last car was rerailed and the crew moved into Hobson at 6:00 P. M. June 20, 1963. The train crew was tied up at 7:30 P. M. in accordance with the hours of service law. Claimants are demanding compensation at the time and one-half rate between 8:00 P. M. June 20, 1963, and 4:00 A. M. June 21, 1963, while, it is complained, they were waiting for a train to move them back to Great Falls, they having completed all of their work at the scene of the derailment south of Hobson on June 20, 1963.

It is Carrier's contention that when the wrecking crew was moved into Hobson on June 20, the damaged cars or "hospital train" had been moved into Hobson. That up to the time of their retirement on June 20, the crew was doing whatever had to be done to ready the repaired cars for the trip to Great Falls, some 93 miles distant; that the Claimants were called to duty at 4:00 A. M., June 21, 1963, and worked for two and one-half hours finishing the work of preparing the damaged cars for movement to Great Falls — the work consisting of over-all inspection of the cars, replacing a broken knuckle on one of the cars, either renewing or replacing the journal bearings and wedges on three journal boxes; that they made as many repairs as they could and on the way to Great Falls the train was required to stop so Claimants could service or repair several of the journal boxes on the damaged cars.

The rule of the controlling agreement in question is Rule 22(c) which reads, as follows:

(c) Wrecking service employes will be paid at the rate of time and one-half for all time working, waiting or traveling from the time called to leave home station until their return thereto, except when relieved for rest periods. Rest periods shall be for not less than five (5) hours nor more than eight (8) hours, and shall not be given before going to work nor after all work is completed.

It will be noted that the rule provides: "Rest periods * * * shall not be given * * * after all the work is completed." In the original letter by the Local Chairman addressed to the Car Foreman in presenting the claims it was stated: "that the work at the derailment was completed because the outfit never returned to the scene of the wreck." There is no statement in Rule 22(c) "that the work of derailment having been completed". This Board is without authority to revise the rule.

It is admitted by the Claimants that on the morning of June 21, 1963, at Hobson that some work was done by them on the disabled cars, such as the inspection of oil boxes, oiling some of the cars and replacing some of the journal bearing wedges and brasses. Since members of wrecking crews are on the scene and usually more available than anyone else, they are frequently assigned much of the work connected with preparing damaged car or hospital trains for movement and this is not in violation of the Agreement.

In Award 1078—Mitchell, which is a sustaining award, we note the following statement: "If there was wrecking service to perform * * * as contended by Carrier, then the claim would have to be denied."

From a reading of the Record in this case, the Board must conclude that the work in connection with the wreck was not completed until the morning of June 21, 1963, when the train started for Great Falls as there was still work to be done in preparing the hospital train for movement on that morning.

See Award 1635 — Carter.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1966,