

Award No. 4970

Docket No. 4743

2-GM&O-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. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier improperly used the wrecking crew of another railroad to the detriment of the Bloomington, Illinois Wrecking crew from 11:15 P.M., March 23, 1963 to 5:00 A.M., March 24, 1963.

2. That accordingly, the Carrier be ordered to additionally compensate Carman Noble Simmons, Carl Presley, John Williamson, Charles Tudor, Jolly Simpson, R. W. Coffey, D. B. Wacker and Carman Helper H. W. Woith for one (1) hour each at the time and one-half rate of pay, and for four (4) hours and 45 minutes each at the double time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, maintains a wrecking outfit and crew at Bloomington, Illinois. Carmen Noble Simmons, Carl Presley, John Williamson, Charles Tudor, Jolly Simpson, R. W. Coffey, D. B. Wacker and Carman Helper H. W. Woith, hereinafter referred to as the claimants, are regularly assigned members of the wrecking crew at Bloomington except that Carman Wacker had resigned his position but was called to accompany the outfit, and Carman Coffey had bid in this vacancy but was not called with the outfit. Claim for pay in behalf of Carman Coffey for all time lost as a result of not being called out with the outfit, less the amount here claimed, is before this division in a separate submission.

At or about 8:15 A.M. on March 23, 1963, the Bloomington wrecking crew was called for derailment at Springfield, Illinois. At the same time the C&IM Railroad wrecking crew was called out to this same derailment. The Bloomington wrecking crew was tied up without pay at the scene of the derailment from 11:15 P.M., March 23, 1963 until 5:00 A.M., March 24,

as possible. Carrier's wrecking crews have many times been used for wrecking service on other railroads and when in this service they worked under the terms of the GM&O contract. Similarly we have many times used other railroads' wrecking outfits and crews to take care of wrecking service on our line.

It is quite evident that the carmen's organization is attempting to gain through an award from your board an interpretation of the agreement which is entirely unjustified and unsupported by facts or reason. The rule involved is clear when it states:

"If . . . 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."
(Emphasis ours.)

A sustaining Award in this case would have the effect of usurping the authority vested in the carrier to operate its affairs in an efficient and economical manner. The instant claim is contrary to the accepted practice on the GM&O and other railroads and should 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 claim is that the Carrier improperly used the wrecking crew of another railroad to the detriment of the Bloomington, Illinois wrecking crew from 11:15 P. M., March 23, 1963 to 5:00 A. M., March 24, 1963.

The second paragraph of Rule 7 provides that:

"If during the time on the road, not including waiting or traveling time, 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; * * *."

The objection is not that the Claimants' relief period was not proper under Rule 7 after they had been on duty fifteen hours, or that the use of the C. & I. M. wrecking crew was improper under the conditions, but that the Carrier used the latter crew during the Claimants' relief from duty.

In other words, the objection really is that the Carrier applied the provision of Rule 7 to the Claimants but not to the C. & I. M. crew.

The Carrier presumably could have relieved the C. & I. M. crew also; but it was working under the provisions of its own agreement, Rule 10 of which, relating to emergency road service, provides that:

"After the first 24 hours, if relieved from duty and permitted to go to bed for five (5) hours or more, they will not be allowed time for such hours, * * *." (Emphasis ours.)

Thus if the Carrier had relieved the borrowed wrecking crew during the period in question, it would have had to pay them anyway, since this was within the first 24 hours.

It was certainly not a violation of the Agreement for the Carrier to apply Rule 7 to its employees, who had agreed to it, but not to the outside crew, which had not, and which under its own rules would have had to be paid for the relief period anyway. This would not have equalized things for the two crews; it would merely have caused the Carrier to waste 5½ hours pay on the foreign crew.

A similar objection was made in Award 3574, in which a carrier had similarly relieved the claimant wrecking crew after twenty hours on duty, and used other carmen to work during the claimants' relief period. In that Award the Division said:

"Finally, we are unable to accept the Organization's apparent position that under the confronting facts the Carrier was obligated to keep the claimants on continuous duty for approximately 48 hours, or to pay them as if they had been on duty for that length of time. Such a conclusion would discourage the provision of rest periods and therefore would be contrary to the intent of Rule 10, which is to provide a 'a minimum rest period for men on assignments whereby proper rest could be secured to fit them for the continuation of tasks to which they are assigned.' Award No. 154."

The Carrier did not violate the Agreement by giving the Claimants an unpaid relief period as authorized by Rule 7, even though it did not concurrently give the outside crew a paid relief period.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October, 1966.