

Award No. 5172

Docket No. 4995

2-C&NW-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That the Chicago and North Western Railroad refused payment to the Norfolk wrecking crew, namely, Delbert Felger, John R. Crotty, Neal Race, Eugene Sevensing, Cecil Donnelson and Dale Cherington for seven (7) hours at time and one-half each, for time held waiting at Sloan, Iowa on September 30, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Chicago and North Western Railway Company, hereinafter called the carrier, maintains a regularly assigned wrecking crew at Norfolk, Nebraska. Delbert Felger, John R. Crotty, Neal Race, Eugene Sevensing, Cecil Donnelson and Dale Cherington, hereinafter called the claimants, are regularly assigned members of the Norfolk crew with assigned hours of 7:00 A.M. to 3:30 P.M., which includes one half hour for lunch.

The claimants completed clearing a wreck at Sloan, Iowa on September 29 1964 at approximately 10:30 P.M. After they completed the work they were told by their Foreman that they would be taken that night to Norfolk by an extra train crew because the 16 hour law had caught the crew assigned to the wreck train.

The claimants waited until 10:00 A.M. the next day, September 30, before a train crew was able to take them to Norfolk.

The carrier refused to allow the claimants pay for the period of 12:00 midnight to 7:00 A.M. on September 30.

A claim was filed in behalf of all of the members of the crew. A copy of the letter presenting the claim is attached and identified as Exhibit A. The car Foreman denied the claim under date of October 19, 1964, a copy of his declination letter is attached and identified as Exhibit B.

Even, however, were it assumed that the claim in this case had any merit, which it does not, the claim in favor of D. Felger and J. Crotty should be denied account not handled in accordance with the applicable time limit rule and accordingly not properly on appeal to this Board.

The carrier submits that the claim in this case, not being supported by the provisions of the controlling agreement, should be denied in its entirety.

All information contained herein has previously been submitted to the organization during the course of handling of this case on the property, and is hereby made a part of the particular question here in dispute.

Oral hearing before the Second Division is waived provided the carrier is given an opportunity to answer, in writing, the organization's submission in this case. In the event this case is deadlocked and submitted to a referee, oral hearing before referee is requested.

(Exhibits not reproduced.)

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.

The basic question is whether or not the members of a wrecking crew are entitled under Rule 10 to seven hours overtime pay for time held waiting at Sloan, Iowa, after they had completed their work and were awaiting transportation to their home base.

Rule 10 reads as follows:

"An employe regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection point, will be paid from the time ordered to leave home station, until his return for all time worked in accordance with practice at home station and will be paid straight-time rates for traveling or waiting, except rest days and holidays, which will be paid for at the rate of time and one-half.

If, during the time on the road a man is relieved from duty and permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by the railway company, actual necessary expenses will be allowed.

Employes will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at points designated.

If required to leave home station during overtime hours they will be allowed one hour preparatory time at straight-time rate.

Wrecking service employees will be paid under this rule, except that all time working, waiting or traveling on week days after the recognized straight-time hours at home station and all time working, waiting or traveling on rest days and holidays will be paid for at rate of time and one half."

Carrier points out that Claimants were permitted to sleep in the wreck car during the hours in question and contends that, under the second paragraph of Rule 10, it is unnecessary to compensate them for that relief time. We have had prior occasion to consider this issue in such awards as 790, 1028, 1048, 1078, 1971, 4115, 4152, 4331, 4958 and 5007 where in line with Petitioner's view, we held that, in the case of wrecking crews, contractual provisions substantially like the second paragraph of Rule 10 relate to rest time during actual working periods away from home and not to time spent in waiting or traveling after the work had been completed. We are satisfied that those awards represent the weight of authority so far as wrecking crew situations are concerned and will follow them here since there is no evidence of a contrary practice on this property and the seven hours in controversy occurred outside of Claimants' regular hours of employment and after all their assigned work had been completed. (cf Awards 4760, 4269, 1637 and others cited by Carrier that reflect the critical distinction made between emergency road work, on one hand, and wrecking service, on the other.)

Carrier maintains that under the time limitation provisions of Article V of the August 21, 1954, Agreement, the claim nevertheless must be dismissed as to Claimants Felger and Crotty since the latter's name was omitted from the letter of appeal of November 17, 1964, to District General Car Foreman Larsen and Crotty's name was not included in the appeal letter of January 14, 1965, to the General Superintendent. Each of these omissions was corrected at the very next appellate step. Carrier's objection to the omission of Crotty's name was timely but in Felger's case the objection came too late (see Awards 1834 and 3931).

While we are in favor of enforcing procedural rules strictly, we are not satisfied that the claim should be dismissed as to any of the Claimants under the circumstances of the present case. The substance of this claim for compensation of a wrecking crew and the identity of that crew were at all times clear, readily identifiable and definite and the inadvertent omission of one name at each of two appellate steps was merely a typographical error that misled no one and was quickly corrected.

In the light of the above mentioned considerations, this claim will be sustained in its entirety.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1967.

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