

Award No. 5388

Docket No. 5238

2-CofG-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carrier violated the controlling Agreement, when on February 6 and 7, 1965, Carman G. D. Slappy, Columbus, Georgia, was refused double time rate of pay for work performed while a member of the wrecking crew.

2. That Carrier be ordered to comply with the controlling Agreement and pay Carman G. D. Slappy an additional eight (8) hours at straight time rate for February 6, 1965, and also, pay for an additional nine and one-quarter (9¼) hours at straight time rate for February 7, 1965.

EMPLOYEES' STATEMENT OF FACTS: Carman G. D. Slappy, hereinafter referred to as the Claimant, is employed by the Central of Georgia Railway Company, Columbus, Georgia, hereinafter referred to as the Carrier, and was working in emergency road service as a member of the wrecking crew on February 6 and 7, 1965.

Claimant's shop assignment at that time was from 8:00 A.M. to 4:00 P.M., Friday, Saturday and Sunday; 12:00 midnight to 8:00 A.M., Monday and Tuesday and his rest days being Wednesday and Thursday.

On February 5, 1965, Claimant worked two and one-half (2½) hours overtime and was called on February 6, 1965 at 6:30 A.M. for wrecking service being relieved at 8:00 P.M. this same date. He was paid eight (8) hours at straight time rate and five and one-half (5½) hours at time and one-half rate for February 6, 1965. However, he should have been paid five and one-half (5½) hours at time and one-half rate and eight (8) hours at double time rate for February 6, 1965.

Before his regular assigned hours on February 7, 1965, Claimant was called for wrecking service, i.e., at 6:30 A.M. and was relieved at 9:00 P.M. this date. Since he worked four (4) hours overtime on February 6, 1965, Claimant should have been paid four (4) hours at time and one-half rate and

Third Division Award 10601, Referee Dolnick:

" * * * They have not, however, presented proof of that fact, nor have they met the burden of proof requirements. Mere assertions by the Claimants' Representatives cannot be accepted as proof. * * *. In Award 9674 this Board said that 'self-serving declarations and general statements (are) of no real probative value'."

Third Division Award 10323, Referee McDermott:

"The claim, however, must fail for lack of proof. Mere assertions of the Claimant are not sufficient to substantiate a claim."

And there are numerous other awards of all four Divisions of the Adjustment Board — all of which clearly state that the burden of proof is on the claimant party to prove an alleged violation of the agreement. To date, the brotherhood has produced no evidence of any violation.

CONCLUSION

Carrier has shown that there is no rule, interpretation or practice to support the claim and argument of the Brotherhood. The claimant is **not** entitled to be paid as alleged in the claim. Carrier has paid the claimant in accordance with the agreement, interpretations and historical practice and we are amazed that the Brotherhood would at this late date enter any objection thereto. As a matter of record, Carrier has continued to apply the agreement and practice in dozens of instances since these three claims (Cases 7318, 7319 and 7320) were filed, and no objection has been made by the Brotherhood. Obviously, Carrier is continuing to pay the carmen properly.

In view of all the facts and circumstances shown by the Carrier we respectfully request your Board to deny this claim in its entirety.

Carrier, not having yet seen the Brotherhood's Ex Parte Submission, reserves the right, after the Brotherhood has set forth its position to the Board, to present such additional evidence and argument as it deems necessary.

All facts submitted in support of Carrier's position in connection with this claim have been presented to the Brotherhood representatives, and made a part of this dispute.

November 14, 1966.

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 had assigned hours as Relief Carman at Columbus Shop, 8:00 A.M. to 4:00 P.M., on Friday, Saturday and Sunday; and from 12:00 Mid-

night to 8:00 A.M. on Monday and Tuesday. His assigned rest days were Wednesday and Thursday. On Wednesday, February 3, Claimant was called on emergency service to derailment. On Saturday, February 6, Claimant was called to duty at 6:30 A.M. and was relieved at 8:00 P.M. the same date. On Sunday, February 7, Claimant was called to duty at 7:00 A.M. and was relieved at 9:30 P.M. on the same date.

The agreement between Central of Georgia Railway Company and various crafts represented by System Federation No. 26 of the Railway Employees Department of the American Federation of Labor dated September 1, 1949, and the subsequent amendments represented by the Agreed Upon Interpretations of Overtime Rules 6, 7, 10 and 111, at a conference held at Savannah, Georgia, on March 17 and 18, 1953, and a subsequent letter of understanding dated September 4, 1953, clarifying Section 4, Page 2, of said agreement is controlling.

Rule 111 and Rule 10 as applied to the Agreed Upon Interpretation are the rules involved in this dispute. Rule 111 of the Agreement is as follows:

"Wrecking crews, including wrecking derrick engineers and firemen and two (2) groundmen, will be composed of carmen who will be regularly assigned by bulletin and will be paid as per Rule 10.

For wrecks or derailments outside of yard limits, the regularly assigned crews will accompany the wrecking outfit. Within yard limits, when wrecker is needed, necessary number of members of wrecking crews will be called to perform the work.

Meals and lodging will be provided by the company while crews are on duty in wrecking service.

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

Rule 10 of the Agreement is as follows:

"An employe regularly assigned at a shop, engine house, repair track, or inspection point, when called for emergency road service away from such shop, engine house, repair track or inspection point, will be paid from the time called to leave home station, until his return for all service rendered in accordance with the practice at home station, and will be paid straight time rate for straight time hours and overtime rates for overtime hours for all time waiting or traveling.

If during the time on the road, not including waiting or traveling periods, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relieved periods will not be paid for; provided that in no case shall he be paid for a total of less than eight (8) 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 railroad, 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 point designated.

Wrecking service employees will be paid in accordance with this rule."

Item 8 of the Agreed Upon Interpretation of March 17 and 18, 1953, is as follows:

"Shop Assignment 8:00 A. M to 4:30 P. M. Monday through Friday.

Called for **emergency work** at 12 Midnight Monday, and worked until 10:00 P. M. Tuesday—22 hours.

He would be paid from 12 Midnight Monday to 8:00 A. M. Tuesday — 8 hours at time and one-half, and from 8:00 A. M. Tuesday until 10:00 P. M. Tuesday he would be paid 14 hours at double time."

Under the above Item 8, Claimant should be paid 8 hours at the time and one-half rate (6:30 A. M. to 2:30 P. M.) and double time rate for 5½ hours (2:30 P. M. to 8:00 P. M.) for Saturday, February 6.

For Sunday, February 7, Claimant should be paid at the time and one-half rate for 8 hours (7:00 A. M. to 3:00 P. M.) and double time rate for 6½ hours (3:00 P. M. to 9:30 P. M.)

AWARD

Claimant to be paid in accordance with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1968.