



**Award No. 5492**

**Docket No. 5190**

**2-NP-CM-'68**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee James E. Knox when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Carmen)**

**NORTHERN PACIFIC RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the Current Agreement the Carrier improperly used other than regular assigned Missoula Wrecking Crew with the exception of Missoula Wrecking Engineer to perform wrecking service at Toston, Montana during the period of March 21st to April 2nd, 1965.

2. That accordingly, the Carrier be ordered to additionally compensate the claimants in the amount of sixty (60) hours at straight time rate and seventy-two (72) hours at time and one-half rate at their applicable rate of pay on the aforementioned dates, had they properly accompanied the wrecker outfit and performed wrecking service. The claimants are A. B. Flint, K. B. Knudson, E. J. Biniek, E. G. Kohler and S. J. Loran.

**EMPLOYES' STATEMENT OF FACTS:** The Northern Pacific Railway Company, hereinafter referred to as the Carrier, maintains a fully equipped wrecking outfit (No. 47), at its Car Shop in Missoula, Montana. In addition, the Carrier also maintains at Missoula, a smaller wrecker derrick, identified as No. 27. The Carrier maintains at Missoula a regular assigned wrecking crew, consisting of eight (8) carmen. It has been a long-standing practice that for wrecks or derailment outside of yard limits, if one wrecking outfit was used, No. 47 or No. 27, the Missoula regular assigned crew will accompany the outfit. If both wrecks No. 47 and 27 are used simultaneously, the regular assigned crew will accompany one wrecker outfit, and the crew for the second outfit is composed from the Missoula Carmen from the Over-time Roster.

On March 19, 1965, Train No. 602 became derailed in the vicinity of Toston.

On March 19, 1965, Missoula Wrecker Derrick No. 27 was ordered out and departed Missoula on March 22, 1965. Mr. Weily, Missoula Wrecker Engineer, arrived at Livingston from Missoula by Train No. 2 and accompa-

The Carrier has shown that:

- (1) The Livingston wrecking crew was primarily responsible for handling the wreck at Toston.
- (2) The Livingston wrecking crew with the use of Wrecker No. 48 handled the wreck at Toston.
- (3) The Livingston wrecking crew while engaged in handling the wreck at Toston required additional equipment, and Wrecker No. 27, stationed at Missoula, was used by this wrecking crew.
- (4) The Livingston wrecking crew required assistance, and P. Weiler, assigned to the Missoula wrecking crew, rendered this assistance.
- (5) Rule 80 of the July 1, 1955 Shop Crafts Agreement does not impair Management's inherent right to determine the equipment that may be used by a wrecking crew.
- (6) Rule 80 of the July 1, 1955 Shop Crafts Agreement specifically provides that, where needed, men of any class may be used to assist members of a wrecking crew.

As Rule 80 was not violated when the Livingston wrecking crew used Wrecker No. 27 in handling the derailment at Toston, and also because Rule 80 was complied with when Mr. Weiler assisted the Livingston wrecking crew in handling the wreck at Toston, the claim covered by this docket should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim have been presented to the duly authorized representative of the employees, and are made a part of the particular question in dispute.

(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 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.

To rerail a train between Livingston and Missoula, a wrecking outfit and a full crew were sent from Livingston and a wrecking outfit and an engineer were sent from Missoula. At the wreck the Missoula outfit was operated by the Missoula engineer, and the necessary ground work was performed by members of the Livingston crew.

The employes claim that five members of the Missoula wrecking crew should have accompanied the Missoula outfit.

The record does not support the carrier's contention that the occurrence was merely a transfer of equipment. The outfit was sent to the wreck specifically to assist in the re-railment, and upon completion of its mission, it was returned to Missoula. It was accompanied and operated by the regular Missoula wrecking engineer.

Under the awards of this Board, this was a situation within the rule providing that "a sufficient number of regularly assigned crew will accompany the outfit." E.g., Awards 2-5051 (Johnson), 2-5003 (Weston), 2-4675 (Daly), 2-3968 (Johnson), 2-3936 (Johnson), 2-3365 (Bailer), 2-3259 (Hornbeck), 2-2185 (Carter), 2-1362 (Wenke), and 2-857 (without referee).

The carrier concedes that two members of the crew would have been required to perform the necessary ground work for the Missoula outfit. There is nothing in the record before this Board to show that two groundmen plus the engineer would not have been a "sufficient number." We, therefore, find that two members of the Missoula crew, in addition to the engineer, should have accompanied the outfit.

The employes claim that members of the crew wrongfully left behind should be paid the compensation (including overtime) they would have received had they accompanied the outfit without deduction for the compensation they actually received. Such a claim, which combines the alternative remedies recognized by this Board, finds no support in our awards.

We have taken two distinct approaches in cases where members of a wrecking crew have been wrongfully left behind. In some cases, we have awarded the claimants compensation at the pro rata rate for the total number of hours they should have been involved in wrecking service without deduction for their regular compensation actually received during this period. E.g., Awards 2-5051 (Johnson), 2-4674 (Daly), 2-4600 (Daly), 2-3932 (Johnson), 2-3259 (Hornbeck), 2-2385 (Wenke), 2-2908 (Kiernan), 2-1972 (Donaldson), 2-1678 (without referee), and 2-1269 (Wenke). In other cases we have awarded the claimants the difference between what they were paid and what they would have been paid had they accompanied the outfit. E.g., Awards 2-5003 (Weston), 2-4675 (Daly), 2-4563 (McDonald), 2-3936 (Johnson), 2-3864 (Johnson), 2-3365 (Bailer), 2-3190 (Whiting), 2-2185 (Carter), 2-1362 (Wenke), and 2-857 (without referee).

The first approach is founded on the remedy given for wrongful assignments where no overtime is involved. While on occasion we have refused to award any compensation on the ground that the employee who should have performed the work was not damaged, we have generally awarded that employee compensation for the time he should have performed the work in question without regard to the fact that his regular compensation covered this period. Such a remedy is dictated by the need to have an effective sanction for the enforcement of the agreement and by the recognition that in the long run or aggregate such misassignments detrimentally affect the claimant's employment opportunities. These policies do not require that overtime hours be treated any differently than straight time hours. Nor is there anything in the language of the overtime provisions which would compel payment of the premium for hours not actually worked.

The second approach is an attempt to award the aggrieved employe the exact damages he has directly and immediately suffered by the lost assignment. Under this approach compensation already received must be deducted, but lost overtime premiums must be added.

While the two approaches are mutually exclusive in the sense that they both cannot be applied in the same case, we are not prepared to find that one or the other is the correct remedy. What is the proper remedy depends on all the circumstances. In a case like this, where the direct and immediate damages suffered by the aggrieved employes are an effective sanction, we prefer the second approach which awards the aggrieved employes the difference between what they received and what they would have received had they accompanied the outfit.

#### AWARD

Claim 1 sustained.

Claim 2 sustained to the extent of the difference between what the two members of the crew who should have accompanied the outfit received and what they would have received had they accompanied the outfit.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1968.