Award No. 5493
Docket No. 5184
2-SOU-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.**

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## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)**

**SOUTHERN RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement other than Carmen were improperly used to augment the regular assigned wrecking crew force at Royal Blue, Tennessee, between the hours of 12:30 P. M. on January 8, 1965 and 3:30 A. M. on January 9, 1965.

2. That accordingly the Carrier be ordered to compensate Carmen J. C. Ashcraft and C. Hawn, Knoxville, Tennessee, for twelve and one-half (12½) hours at time and one-half rate of pay for work performed by other than Carmen employes between the hours of 3:00 P. M. on January 8, 1965 and 3:30 A. M. on January 9, 1965.

EMPLOYES' STATEMENT OF FACTS: M. H. Adkins, hereinafter referred to as the claimant, was employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, as a Sheet Metal Worker at Russell, Kentucky. The Carrier maintains a locomotive repair shop, car repair yard, heavy repair car shop and a passenger station at this city. Claimant's regular assignment was Wednesday through Sunday, 7:00 A. M. to 3:00 P. M. at the locomotive shop. On Monday, February 22, 1965, Claimant's service was required and he worked that day. This being his rest day and also one of the seven national holidays observed by the railroads.

For work performed on Monday, February 22, 1965, the Claimant contends that under the terms of the applicable agreement he is entitled to compensation in the amount of twenty-four hours: eight hours at the rate of time and one-half rate for working on his assigned rest day, and eight hours at the time and one-half rate for working on the legal holiday.

The Carrier has compensated the claimant for eight hours at time and one-half rate for working on his rest day, but has refused to compensate him for eight hours at time and one-half for working the legal holiday (Washington's Birthday).

Carrier's position is strengthened by Rule 6(d), which reads as follows:

> "(d) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computation leading to overtime."

The first sentence of the above provision states that there shall be no overtime on overtime. In other words, the Carrier is not required to pay more than time and one half for one act of overtime service. What the Employes seek in this dispute is a compound payment for one act of service in direct violation of Rule 6(d).

For more than 40 years the Employes have shown that their intent with respect to the applicable rules coincides with that of the Carrier. They cannot now at this late date change their position for the sole purpose of securing a windfall for an employe who, by fortuitous circumstance, was called to work on a holiday which was also his birthday.

Finally, even if another payment were due Adkins for one act of service, he would not be due 8 hours at time and one-half. Credit should be given for the time allowed in error which Carrier has not deducted.

The claim is without merit and it should be denied.

All data herein submitted in support of Carrier's position has been presented to the Employes or duly authorized representatives thereof and made a part of the question in dispute.

An oral hearing before the Board is not requested unless Employes should request such hearing, in which event Carrier should have advance notice thereof.

(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.

A four man wrecking crew was sent to rerail a car blocking a mine track. The employes claim that the carrier improperly supplemented this crew with six track laborers who participated in setting jacks and blocks and otherwise assisted in rerailing the car.

The agreement provides that "wrecking crews . . . shall be composed of regularly assigned carmen . . ." and that "when wrecking crews are called for wrecks . . . the regularly assigned crew will accompany the outfit. . . ." We have generally held that under such provisions even menial tasks, such as carrying or positioning blocks, jacks, cables and hooks, involved in rerailing the car or clearing the wreck must be performed by members of the wrecking crew in those situations where a wrecking outfit or a crew is sent to the wreck. E.g., Awards 2–4563 (McDonald), 2–3932 (Johnson), 2–2908 (Kiernan), 2–2385 (Wenke), 2–1298 (Gilden). But see Award 2–5195 (Abrahams).

We find no justification for creating uncertainty and dashing the parties' reasonable expectations by abandoning these long standing awards which have demonstrated their ability to command adherence within the broad tolerance given previous awards under our principles of stare decisis. This is not to say that operating employes cannot rerail their own cars when this can be done without sending a wrecking outfit or additional assistance. E.g., Award 2–1322 (Donaldson). Nor are we passing on the question of whether an emergency could justify using others, for in this case the carrier either knew of the need for additional help, or could have reasonably anticipated that need in time to send additional members of the crew with the wrecking outfit. Under our awards, such circumstances do not qualify as an emergency. E.g., Awards 2–4964 (Johnson), 2–4413 (McDonald), 2–2784 (Ferguson), 2-2385 (Wenke).

We find that the evidence before this Board shows that the six track laborers were improperly permitted to participate in setting jacks and blocks and otherwise to assist in rerailing the car, and that at least two additional members of the wrecking crew should have accompanied the outfit as claimed by the employes. The affidavit of the foreman which simply recites his conclusion that no carman's work was performed by others is not sufficient to overcome the affidavits of the members of the crew which specifically describe the work performed by the track laborers.

The employes claim that the two members of the crew wrongfully left behind should be paid as if they had accompanied the outfit. The wrecking service involved 12½ hours from the time the outfit departed until it returned. All this time was outside the claimants' regularly scheduled hours, and, had they accompanied the outfit, they would have received an additional 12½ hours' pay at time and one half.

Under the circumstances of this case, we find the properly remedy to be compensation for this lost time at the overtime rate. See Award 2–5492.

AWARD

Claim 1 – sustained.

Claim 2 – sustained.

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.

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