



Award No. 5504
Docket No. 5242
2-B&OCT-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE BALTIMORE AND OHIO CHICAGO TERMINAL
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Baltimore & Ohio Chicago Terminal Railroad violated the current working agreement when they paid the straight time and time and one-half rate instead of the double time rate to Carmen G. Cyr and A. Hernandez on May 14, 1965 time card.

2. That accordingly the Baltimore & Ohio Chicago Terminal Railroad make whole Carmen Cyr and Hernandez in the amount of 8 additional hours at the straight time rate for 3:30 P.M. to 11:30 P.M. and 4 additional hours at the straight time rate for 11:30 P.M. to 7:30 A.M. for May 14, 1965 time card.

EMPLOYES' STATEMENT OF FACTS: The Baltimore & Ohio Chicago Terminal Railroad, hereinafter referred to as the Carrier, maintains a wrecking crew at Barr Yard, Chicago, Illinois, composed of Carmen, two of whom are G. Cyr and A. Hernandez, hereinafter referred to as the Claimants.

In addition to being regularly assigned members of the wrecking crew, Claimants are regularly assigned to perform Carmen's work on the 3:30 P.M. to 11:30 P.M. shift in Barr Yard. Both Claimants reported and worked their regular shift 3:30 P.M. to 11:30 P.M. on Thursday, May 13, 1965. After going off duty at 11:30 P.M., both Claimants were called at 2:45 A.M. in the morning for wrecking service at Bremen, Indiana and continued in service until the wrecking assignment was completed at 5:00 A.M. May 15, 1965 (calendar day May 16). For said service Claimants were compensated as follows:

5-13-65 — 3:30 P.M. to 11:30 P.M. — 8 hrs. straight time

2:45 A.M. to 3:30 P.M. — 8 hrs. time and one-half

4 hrs. 45 min. — double time

Each of the claimants so used was compensated " * * * from the time called until his return for all service rendered in accordance with the practice at home station, * * *."

Under any circumstances, Rule 5(e) provides its own exclusion to the effect " * * * Except as otherwise provided in these rules [Rule 8] * * *."

This has been the accepted method of compensating wreck crew members on the B&OCT over the years. The interpretation argued for and sought for by the Local Committeeman runs contrary to that accepted and standard method of computing compensation for wreck crew members.

In a word, the claimant Carmen in this case were properly compensated on the date for which claim has been made.

CARRIER'S SUMMARY

Contrary to the Committee's intended application, Rule 5(e) does not stand alone. It is Rule 8, not Rule 5(e), that governs compensation for "wrecking service employes." Rule 8 specifically provides that such employes "when called for emergency road service" will be paid " * * * from the time called until [their] return for all service rendered in accordance with the practice at home station, * * *." It is the position of the Carrier that the claimants were properly compensated for services performed on May 14, 1965.

The Carrier submits that the instant claim is not valid at either Parts 1 or 2. The Carrier respectfully requests that this Board so rule, and that this claim in its entirety be declined.

(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.

Claimants, regularly assigned Carmen at Carrier's Barr yard, worked their regular shift on May 13, 1965 from 3:30 A.M. to 11:30 P.M. Thereafter, both Claimants were called out for a derailment at Bremen, Indiana at 2:45 A.M., May 14, 1965 and continued in service until the wrecking assignment was completed at 5:00 A.M., May 16, 1965.

Claimants were compensated at the double time rate from 10:45 A.M. to 3:30 P.M. on May 14, 1965 for services rendered, but Carrier paid only the straight time rate, instead of double time, for work performed from 3:30 P.M. to 11:30 P.M. on May 14, 1965 and the time and one-half rate from 11:30 P.M., May 14, 1965 to 7:30 A.M. on May 15, 1965. Claimants contend that Carrier violated Rule 5(e) of the applicable Agreement, which provides for payment of the double time rate for all overtime beyond sixteen (16) hours' service, computed from the starting time of the employe's regular shift.

Carrier avers that Rule 5(e) is not applicable, because wrecking service employees are to be paid under Rule 8 of said Agreement, and further that Petitioner's interpretation of Rule 5(e) is contrary to the accepted method of computing compensation for wrecking crew workers.

Rule 5(e) specifically provides as follows:

"(e) Except as otherwise provided in these rules, all overtime beyond sixteen (16) hours' service computed from the starting time of the employee's regular shift will be paid for a double time. If an employee is required to render service beyond twenty-four (24) hours computed from the starting time of his regular shift, double time payment will be continued. An employee will not be required to render service beyond such twenty-four (24) hour period except to complete the assignment."

Rule 8, in part, reads as follows:

"An employee regularly assigned at a shop, enginehouse, repair track, or inspection point, when called for emergency road service away from such shop, enginehouse, repair track or inspection point, will be paid from the time called 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.

* * * * *

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

Analysis of the pertinent rules, as well as our previous Award 5181, involving a similar dispute between these parties under the same rules of the applicable Agreement requires a finding that Rule 5(e) is applicable in this case, and that Carrier violated the Agreement, as alleged by Petitioner. Here, Carrier conceded that Claimants were entitled to the double time rate under Rule 5(e) beyond sixteen (16) hours' service on May 14, 1965, but then invoked Rule 8 of the Agreement during Claimant's second regular shift, instead complying with Rule 5(e). Wrecking service employees are not specifically excluded under Rule 5(a), and Rule 8 explicitly refers to practice at home stations where Rule 5(e) clearly would be applicable to the hours of service involved in this dispute had the work been performed at Claimant's home station. Accordingly, the claim will be sustained.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this sixteenth day of July, 1968.

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