

Award No. 5545

Docket No. 5328

2-GN-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Great Northern Railway Company violated the current agreement governing the payment of wrecking crews, in wrecking service, when they failed to compensate the Fargo wrecking crew during time relieved on May 14, 15, 16, 1965.

2. That accordingly, the carrier be ordered to additionally compensate Fargo Wrecking Crew members, Donald Minette, John W. Smith, Herbert Schwartz, John Kline, Chester Keeney and Harry Zehren in the amount of 28 hours each, at the rate of time and one-half, account of said violation.

EMPLOYEES' STATEMENT OF FACTS: At 4:30 A. M., May 13, 1965 the Great Northern Railway Company, hereinafter referred to as the Carrier, called the Fargo Wrecking outfit and crew members, Donald Minette, John W. Smith, Herbert Schwartz, John Kline, Chester Keeney and Harry Zehren for wrecking service at Dwight, North Dakota, a small town 7 miles from Breckenridge, Minn. The wrecking outfit remained in wrecking service from 4:30 A. M., May 13, 1965 through May 19, 1965 when it was returned to Fargo, its home terminal, and the crew released at 6:30 P. M.

The wrecking crew worked 39 hours on May 13 and 14, 1965, clearing the main line and rerailling cars. They were relieved from duty on May 14, 1965 and transported to their homes, leaving the wrecking outfit at the derailment.

The wrecking crew was ordered to return to wrecking service on May 17, 1965 and was returned to the site of the derailment, by bus, at approximately 6:15 A. M. that date.

Per the terms of the agreement, for payment of wrecking service, the claimants filed claims for 16 hours, at the rate of time and one-half, for

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 waived right of appearance thereon.

The facts herein are that claimants were called early in the morning of May 13, 1965 at Fargo, North Dakota by Carrier for wrecking services at Dwight, North Dakota, and worked continuously until the evening of May 14, 1965, when they were relieved from duty and were transported to their headquarters at Fargo, North Dakota. On May 17, 1965, Claimants returned to the scene of the wreck and upon completion of their work returned to their headquarters on May 19, 1965.

The determination of this dispute hinges on the interpretation of Rule 22(c) of the Agreement, which provides as follows:

“(c) Wrecking service employes will be paid at the rate of time and one-half for all time working, waiting or traveling from the time called to leave home station until their return thereto, except when relieved for rest periods. Rest periods shall be for not less than five (5) hours nor more than eight (8) hours, and shall not be given before going to work nor after all work is completed.”

The Organization's position is that Rule 22(c) limits rest periods for wrecking crews to not less than 5 hours nor more than 8 hours and that Carrier exceeded this limitation when it relieved claimants for rest from Friday evening, May 14, 1965, until 4 A. M., Monday, May 17, 1965; that the wrecking equipment remained at the scene of the derailment and therefore the claimants should not have been released for more than 8 hours unless the crew accompanied the wrecking equipment to its home base.

Carrier contends that claimants were not relieved for “rest” pursuant to Rule 22(c) when they were returned to their home station at Fargo, North Dakota, on May 14, 1965, but were released from wrecking services and were properly compensated therefor for all time working, waiting, or traveling from the time called to leave their home station until their return thereto.

A close examination of Rule 22(c) discloses that Carrier is not prohibited from returning wrecking service employes to their home station prior to completion of the work of cleaning up the wreck, or that the Carrier is prohibited from releasing wrecking service employes for more than 8 hours without the crew accompanying the wrecking equipment to its home base.

We are of the opinion that the rest period provisions of said Rule 22(c), in this instance, applies to “rest periods” while at the scene of the wreck or while wrecking service employes are away from their home station. We have read and considered Award No. 3897, where the Board in that Award concluded that wrecking service is a “continuous” mission or project and that

the period of rest is part of the wrecking services whether it is spent at home or at the scene of the wreck. The rule involved in said Award No. 3897 is different from the Rule involved in our instant dispute. In said Award No. 3897, the Rule did not contain, as here, the provision: "from the time called to leave home station until their return thereto." Therefore, Carrier was permitted to return the claimants herein to their home station without being in violation of the Agreement.

Further, Carrier has shown that by past practice it has been permitted to return the wrecking crew to its home station prior to completion of the work at a wreck without protest or claim being filed by the Organization. The record shows that the General Chairman admitted that the Organization has not protested such action by Carrier in the past.

Therefore, it is the opinion of this Board that the Agreement was not violated, and the Claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October, 1968.