



Award No. 5784

Docket No. 5666

2-CMSTP&P-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
CO.**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when Carrier moved the Spokane wrecker from Spokane, Washington to Gibbs, Idaho on November 8, 1966 and failed to allow the assigned crew to accompany the outfit.
2. That the current agreement was further violated when Carrier moved the Spokane wrecker from Gibbs, Idaho to Spokane, Washington and only allowed the Derrick Operator (Mr. W. P. Babinski) to accompany the outfit on this movement.
3. That accordingly the Carrier be ordered to compensate claimants as outlined below:

Mr. W. P. Babinski

4:30 A.M. to 7:00 A.M. November 8, 1966 One (1) hour straight time, preparatory time, basic rate \$3.0708.

Three (3) hours and twenty (20) minutes at time and one-half rate (penalty call).

Mr. James Evey

3:30 P.M. to 7:00 P.M. November 8, 1966 Three (3) hours and thirty (30) minutes at time and one-half rate.

Mr. S. W. Lang

4:30 A.M. to 7:00 A.M. November 8, 1966 One (1) hour preparatory time at straight time rate, basic rate \$2.9668.

Three (3) hours and twenty (20) minutes at time and one-half rate (penalty call).

3:30 P.M. to 7:00 P.M. November 8, 1966 Three (3) hours and thirty (30) minutes at time and one-half rate.

Mr. A. Destito

4:30 A.M. to 7:00 A.M. November 8, 1966 One (1) hour preparatory time at straight time rate, basic rate \$2.9668.

Three (3) hours and twenty (20) minutes at time and one-half rate (penalty call).

12:00 Noon to 7:00 P.M. November 8, 1966 Seven (7) hours at time and one-half rate.

Mr. L. C. Wilcox

4:30 A.M. to 7:00 A.M. November 8, 1966 One (1) hour preparatory time at straight time rate, basic rate \$2.9968. Three (3) hours and twenty (20) minutes at time and one-half rate (penalty call).

12:00 Noon to 4:00 P.M. November 8, 1966 Four (4) hours at time and one-half rate

Mr. N. J. Nelson

5:30 A.M. until 7:00 A.M. November 8, 1966 Three (3) hours and twenty (20) minutes at time and one-half rate (penalty call).

4:00 P.M. to 7:00 P.M. November 8, 1966 Three (3) hours at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The above listed individuals, hereinafter referred to as the claimants, are all regularly assigned employes of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, at Spokane, Washington.

Carrier maintains a wrecking outfit and a regularly assigned wrecking crew at Spokane, Washington and claimants are members of such crew.

On November 8, 1966, carrier had need to move the wrecker and crew to Gibbs, Idaho to rerail an overturned car. The wrecking outfit was moved on the "Coeur d' Alene turn" (Train No. 95) which had a called time of 5:30 A.M. but the claimants were transported by auto and truck to the scene of the derailment, thus the outfit moved to the scene unattended.

On the return trip to Spokane, Washington all the claimants with the exception of Mr. Babinski were returned by car and truck. Mr. Babinski accompanied the outfit and he arrived at Spokane, Washington at 7:00 P.M., November 8, 1966.

Claim is for time claimants were not allowed to accompany outfit.

The carrier's vice president — labor relations asserted in his denial letter that the claim of claimant Nelson had been enlarged at the local level and that the claim was barred. The local foreman called this to the attention of claimant Nelson in his letter of December 14, 1966. On December 29, 1966, the correction was made and received on that date by Foreman Davidson. No objection was made by the foreman or any other appeal officers until Mr. Amour's letter of August 31, 1967. After being declined by district general car foreman further appeal was made to carrier general superintendent G. L. Wood. The next appeal was to the vice president — labor relations. Your board will note that all of the carrier's officers handling the claim prior to the final appeal, accepted the corrected claim without objecting to it. This fact was called to the attention of the vice president — labor relations in my letter of August 31, 1967 and discussed in conference on September 15, 1967. No further exception was taken, as evidenced by Mr. Amour's letter of October 19, 1967.

This dispute has been properly handled with all carrier officers designated to handle such matters, all of whom have declined to adjust it.

It is the carrier's position that for the reasons outlined herein the instant claim is barred and must be dismissed and it is our further position that the instant claim is in no way supported by past practice, schedule rules or agreement, and we respectfully request that the claim be denied.

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 at hearing thereon.

Carrier maintains a wrecking outfit and a regularly assigned wrecking crew at Spokane, Washington. Claimants are members of that crew. On the date in question, Carrier had to dispatch the wrecker to re-rail an overturned car. The wrecking outfit was part of train No. 95 which had a called time of 5:30 A.M. Claimants were transported by auto and truck to the derailment leaving Spokane at 7:10 A.M. The work was completed and all claimants except one were returned to home station by 12 noon. The one remaining claimant accompanied the wrecking outfit on the return trip to the home station arriving at 7:00 P.M. The wrecking outfit departed originally at 7:00 A.M. and returned to Spokane at 7:00 P.M. Claimants allege that they should be compensated for 1 hour preparatory time to 5:30 A.M. and up to and including 7:00 P.M. They insist that this is in accord with rule 88C of the Agreement which provides:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailment within yard limits, sufficient carmen will be called to perform the work."

The Organization "Arguendo" states the wrecking crew must "physically" accompany the outfit. The language of the rule is clear and precise and in the absence of mutually agreed upon interpretation by both parties means precisely what it says. The crew will accompany the outfit outside yard limits. This connotes the trip to the derailment and back to the home station. Compensable time therefore should be from 7:00 A.M., the time of departure from Spokane to 7:00 P.M., the time of arrival back at Spokane. There is no basis in the Agreement for any time prior to 7:00 A.M. Compensable time over and above that which claimants have already received should be at the time and half rate in excess of the 8-hour workday.

Procedural objections by the Carrier have been considered, but since they were not timely raised on the property, are deemed to have been waived.

A W A R D

Claim sustained consonant with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1969.

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