



Award No. 5913

Docket No. 5705

2-LV-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Arthur Stark when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 96,
RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(CARMEN)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when Carmen James Donner, Stanley Christman, Clayton Andrews and Henry Kleppinger were denied payment of three and one-half (3-1/2) hours at the double time rate of pay. And, Carmen Clinton Freeby, Ira Bowman, Gerald Lorah, Warren Eichgasser, Robert Shoemaker and Robert Schock were denied payment of five and two-thirds (5-2/3) hours at the double time rate of pay for October 11, 1967.
2. That accordingly, the Carrier compensate the aforesaid employees the number of hours payment which they were denied at the double time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Carmen James Donner, Stanley Christman, Clayton Andrews, Henry Kleppinger, Clinton Freeby, Ira Bowman, Gerald Lorah, Warren Eichgasser, Robert Shoemaker, and Robert Schock, hereinafter referred to as the claimants, are all regularly assigned members of the Packerton, Pa. wreck train crew.

The carrier had a derailment at Penn Haven, Pa. and dispatched the Packerton, Pa. wreck train outfit and Sayre, Pa. wreck train outfit to the scene of the derailment.

Packerton, Pa. is ten (10) miles distant from Penn Haven, Pa.

Sayre, Pa. is one hundred forty one (141) miles distant from Penn Haven, Pa.

On October 11, 1967 the Packerton wreck train outfit and crew was split into two (2) sections. The first section was composed of the wreck train outfit, with the exception of the commissary car, and fourteen (14) of the cars which had been derailed. These cars were chained together to be moved from the scene of the derailment to the Packerton, Pa. transportation yard, ten (10) miles away, and Carmen Clinton Freeby, Ira Bowman, Gerald Lorah, Warren Eichgasser, Robert Shoemaker and Robert Schock were assigned to

Taken out of context, the following is quoted by the employees from Award No. 3897;

“Recognizing that wrecking service is performed as continuous mission or project requiring extra-ordinary expenditure of effort and having in mind the several rules recognize this characteristic of continuity we fail to see how there can be an effective interruption by reason of the expedient of removing the men to their homes. It is not necessary to decide whether the men have a right to stay with the outfit. It is sufficient to decide that the period of rest is part of the wrecking service whether it is spent at the scene or at home.”

The continuity of the wrecking service in the case now before your board did not remain intact; the wrecking outfit and the claimants were removed from the scene of the derailment and returned to their home base of the outfit and the men, and they were released to their homes until a later time when they were moved, with their outfit, from their home base at Packerton, Pa., back to the scene of the derailment to resume work of clearing the derailment.

In the handling of this case on this property, employees recognized the clear difference between rule 11 applicable on this property and rule 8 in the case of award 3897 when they based their claim on “Rule 11 reading in pertinent part:”

“If during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; . . .”

There being no such provision in rule 8 involved in award 3897, argument by the Employees based on the quoted pertinent section of rule 11 constitutes establishment of the important difference between award 3897 and the dispute now before the board.

Carrier submits that it can be seen the portion of award 3897 quoted by the employees out of context does not sustain them when the entire set of facts in each case is considered.

We submit the claimants and wreck outfit were clearly and completely released from service and work upon return to Packerton, Pa. This did not apply in award 3897.

CONTENTION OF CARRIER: Carrier submits it has shown that no rule of agreement has been violated and position of employees should be denied because none of the rules relied upon by them sustain their position.

Carrier further submits that the findings in award 3897 were based on provisions of rules in effect on the carrier involved in that case; which provisions are not present in this case. Therefore, award 3897 does not fit this case and does not apply here.

Claimants were called to accompany the wreck train outfit, performed wrecking service, were returned to their home base and released to their homes. They were again called to return to the scene of the derailment with the wrecking outfit.

There was no violation of the agreement and no further monetary payment is due.

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.

On October 10, 1967, a derailment occurred at Penn Haven Junction, Pennsylvania. Two wreck train outfits were called, one from Sayre (140 miles away), the second from Packerton (8 miles away). When the derailment was partially cleared, 14 cars were chained together and moved to Packerton with the Packerton wreck train (minus its commissary car) and accompanied by Claimants C. Freeby, I. Bowman, G. Lorah, W. Eichgasser, R. Shoemaker and R. Schock, all members of the Packerton wreck train outfit. They arrived at Packerton and went off duty at 1:30 A.M. on October 11. According to Carrier, these men were paid two hours at double time (i.e., till 3:30 a.m.).

The remaining Claimants (also members of the Packerton wreck train outfit) remained at Penn Haven Junction, but performed no work. They rode back to Packerton with the Sayre wreck train outfit in the Packerton wreck train commissary car. They arrived at 3:30 A.M. and went off duty.

At 7 A.M. the entire Packerton wreck train outfit resumed duty, returning to Penn Haven Junction to complete clearing of the derailment. None of the Claimants were paid for the hours 3:30 to 7 A.M. although members of the Sayre wreck outfit were paid for that time.

Rule 11 declares:

“Rule 11.

Emergency Service Road

An employe regularly assigned at a shop, engine house, repair track or inspection point, when called for emergency road service away from such shop, engine house, repair track or inspection point, will be paid from the time called to leave home station, 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.

If during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by railroad actual necessary expenses will be allowed. Employes will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at point designated.

Wrecking service employes will be paid in accordance with this rule.”

Petitioner contends that Claimants should have received double time pay until 1 A.M. since 1 The second group did not have the required five or more hours to go to bed, and 2 The first group is entitled to the same pay as the second. However, Rule 11's reference to five hours applies specifically to “time on the road”. To sustain Petitioner's interpretation we would have to delete

the first phrase of the second paragraph (the provision would then read: "If a man is relieved from duty and permitted to go do bed for five 5 or more hours, such relief will not be paid for"). Of course, we are without authority to ignore the words of the agreement. Thus, in the instant case, each Claimant's pay was based on the first paragraph of Rule 11, "from the time called to leave home station, until his return", with due regard for equality of treatment of all wreck outfit members. Award 3897, cited by Petitioner, is not controlling since it applied to a differently worded rule.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.