



Award No. 6133

Docket No. 5933

2-MKT-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly relieved G. R. Dodds, E. G. Robinson, B. G. Sketers, C. L. Williams and I. L. Ramey, regularly assigned wrecking crew members, from 5:30 P. M., February 10, 1969, until 1:00 A. M., February 11, 1969, after completing the setting of a highway bridge at Sedalia, Missouri, Mile Post No. 227.

2. That, accordingly, the Carrier be ordered to additionally compensate the above mentioned carmen for seven and one-half (7½) hours each at the overtime rate on the above dates.

EMPLOYEES' STATEMENT OF FACTS: At about 5:30 A. M., February 10, 1969, the Missouri-Kansas-Texas Railroad Company, hereinafter referred to as the carrier, dispatched its Parsons, Kansas wrecking outfit and crew comprised of G. R. Dodds, E. G. Robinson, B. G. Sketers, C. L. Williams and I. L. Ramey, hereinafter referred to as the claimants, to Sedalia, Missouri, Milepost No. 227. After arriving at Sedalia, the claimants worked until 5:30 P. M., setting a highway bridge and at that time were tied up to await arrival of Train No. 12 for transportation on to milepost No. 97.

The outfit and crew were picked up by train No. 12 at 1 A. M., February 11, 1969, and transported to milepost No. 97, arriving there at 11 A. M. where the crew worked until 6:15 P. M. rerailing cars involved in derailment.

Claim was timely filed for the period 5:30 P. M., February 10, 1969, to 1 A. M., February 11, 1969, while claimants were waiting at Sedalia.

This dispute has been handled with all officers of the carrier including the highest officer designated to handle such disputes, all of whom have declined to adjust it.

The agreement effective January 1, 1957, as subsequently amended, is controlling.

For each and all of the foregoing reasons the Missouri-Kansas-Texas Railroad Company respectfully requests the Second Division, National Railroad Adjustment Board, deny said claim and grant said railroad company such other relief to which it may be entitled.

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 employees 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.

The wrecker crew consisting of the Claimants in this case left its home station of Parsons, Kansas, at 5:00 A. M. on February 10, 1969, and arrived at Sedalia, Missouri, at 2:30 P. M. It assisted in setting a highway bridge until 4:00 P. M. It was relieved at 5:30 P. M. until 1:00 A. M. the next morning, when the wrecker outfit, which included a diner and bunk car, was picked up by a train and delivered at 11:00 A. M. to the site of a derailment. The re-railment was completed at 6:15 P. M. The 7½ hours between 5:30 P. M. and 1:00 A. M. was treated by the Carrier as unpaid relief time. The Organization contends that it should be considered as waiting time and paid for at time and one-half.

This matter is covered by Rule 7 of the Agreement between the Parties, the pertinent paragraphs of which read as follows:

“(a) An employe regularly assigned to work at a shop, engine-house, repair track, inspection point, or other facility, when called for emergency road work away from such shop, enginehouse, repair track, inspection point, or other facility, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station and straight time rate for all time waiting or traveling.

(b) If during the time on the road a man is relieved from duty and permitted to go to bed for five (5) hours or more, such relief time will not be paid for provided that in no case shall he be paid for less than the eight (8) hours constituting his regular assignment at the home station when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by the company, actual necessary expenses will be allowed.”

* * * * *

(c) Wrecking service employes will be paid under this rule, except that all time working, waiting or traveling on holidays will be paid for at rate of time and one-half, and all time working, waiting or traveling on week days after the recognized straight time hours at home station will also be paid for at rate of time and one-half.”

The Organization contends that the crew members were notified first of the derailment task and only later about the bridge work; and that the 7½-hour period must be regarded as waiting time, because the work at the first site had been completed and because the crew was only waiting for the next train.

The Carrier contends that the crew members were originally notified of both tasks; and that the time period here involved may appropriately be designated by the Carrier as relief time, because the wrecking work had not been completed and because Rule 7 places no limitation on the Carrier's right to relieve a man from duty so long as he is permitted to go to bed for at least five hours and is paid for at least the eight hours of his regular assignment.

We conclude from the evidence that the crew members were told of both tasks at the outset. Their own affidavit states in part: "we were told that on the way to the wreck we would stop at Sedalia and help set a highway bridge." We note that they did not say: we were told on the way to the wreck that we would stop at Sedalia. We do not, however, consider this particular matter to be relevant to a decision in this case. We do not find in Rule 7 anything that would make the distinction between relief time and waiting time dependent upon when, or in what order, the various tasks of a total assignment are made known to the employees.

This Division has long held that the purpose of the relief-time provision is "providing a minimum rest period for men on assignments whereby proper rest could be secured to fit them for the continuation of the tasks to which they are assigned." (Award 154) We have therefore frequently held that delays in returning a wrecking crew to its home station after completion of its tasks may not be considered as relief time. Such cases, however, are not relevant to the present one, in which the tasks had not been completed.

Both parties have referred to our Award 2791. The Carrier states that it is not controlling in the present instance, because in that case the wrecking work had been completed before the relief time was granted prior to a second task. We recognize this difference in the two cases, but we feel it is not of major significance, for it is the view of the present neutral that it makes no difference whether the wrecking work is the first or second of a double assignment, since paragraph (b) of Rule 7 applies equally to emergency road service and wrecking service.

The Organization finds support for its position particularly in the following sections of the opinion in that case:

"The question is whether the claimant members of the wrecking crew were being given rest in the middle of an assignment, or whether they were waiting to be taken to a second assignment. . . . This Division is of the opinion that the rest provisions of the rule were written in contemplation of a single protracted assignment. The rule would undoubtedly have been phrased differently if it had been intended to permit sending a wrecking crew out on a variegated group of assignments."

The present neutral concludes that he cannot accept the reasoning just quoted and instead should follow the reasoning in Award 1637, as quoted below. He feels obliged to respect the principle of contract interpretation that the parties shall be assumed to have made provision for a situation unless

there is conclusive evidence to the contrary. He can find no reason whatever to conclude that the parties to the Agreement would have phrased Rule 7 differently if they had intended it to permit sending a wrecking crew out on "a variegated group of assignments." In the first place, this rule has nothing to do with the permissibility of a multiple assignment. It deals only with compensation. Secondly, those who adopted the rule were experienced and sophisticated negotiators, who were surely well aware that a wrecking crew trip frequently involves more than one task. Thirdly, the language of the Rule clearly implies that it was not intended to exclude multiple tasks, where it states in paragraph (a) that "An employe . . . when called for emergency road work away from such shop, . . . will be paid from the time ordered to leave home station until his return . . ." and in paragraph (b) that "If during the time on the road . . ." Both phrases imply that the total trip shall be regarded as a unit. The Rule makes no reference to the individual assignments or tasks involved in the trip of a wrecking crew, and we see no reason to assume that this was unintentional.

In rejecting some of the reasoning in Award 2791, we reaffirm our view expressed in Award 1637 as follows: "The terminal points of the road emergency service covered by the rule are the time of leaving and the time of returning to the home point. The fact that emergency work may be done on different pieces of equipment at different times is not a factor in determining the meaning of the rule."

Therefore, in applying the rule in the present case, our decision will not rest on the technicalities of when or in what order the various tasks were assigned or performed. We shall follow, rather, our frequently expressed view that the rule permits relief time only for the purpose of granting rest to fit the employe for continuation of the tasks ahead. We note that it was a ten-hour trip to the site of the derailment, which would provide ample rest for the employes. We therefore concur in the contention of the Organization that the only purpose in holding the crew at Sedalia was to wait for transportation. If transportation had been available earlier, it would doubtless have been used and the employes would still have had ample rest. We conclude that the time period involved in this case is more properly to be considered as waiting time than as relief time.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.

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