Award No. 6192
Docket No. 6047
2-SCL-CM-'71

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. 42, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current applicable agreement the Carrier violated the current working agreement when Wrecker Engineer, W. B. Iler was not informed that the departure location of the wrecker derrick had been changed on April 7, 1969.

2. That accordingly the Carrier be ordered to compensate Wrecker Engineer, W. B. Iler four and one half (4½) hours at time and one half pro rata rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carman W. B. Iler is wrecker engineer at Tampa, Florida, with a bid-in position.

Mr. Iler was not informed of any change in the departure location of the derrick and upon reporting to the usual location and finding the derrick not there went to Uceta Shop to investigate as to its whereabouts.

Mr. Iler was paid one (1) hour at straight time pro rata rate of pay for reporting to work on the morning in question.

Another member of the wrecking crew, Mr. C. O. Peterson, was observed this morning running at the last minute to catch the derrick which he had finally located.

Carrier officials in charge at this point stated that a better method of operation concerning the wrecker would be instigated if this instant claim were withdrawn.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the carrier's highest designated officer.

The Agreement effective January 1, 1968, as subsequently amended, is controlling.

The respondent carrier reserves the right, if and when it is furnished ex parte petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered herein.

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.

This claim arises due to claimant reporting for wrecker derrick work as an engineer at Uceta Yard (where the wrecker derrick is generally stored) rather than Yeoman Yard, where the crew, with the exception of claimant, worked 4½ hours overtime before returning to station, and claimant is claiming 4½ hours of pay at the overtime rate.

The determination of this claim hinges on the fact of whether or not Carrier called claimant to report for work on the date in question at Yeoman Yard rather than at Uceta Yard.

The Organization argues that if claimant purposely wanted to miss the wrecker trip, why did he accept the call at 5:45 A. M., and frantically try to locate the whereabouts of the wrecker; that claimant was never notified of a change in departure location of the wrecker; that claimant did report for work, and he was allowed one (1) hour's pay by Carrier.

We are confronted in this dispute with conflicting testimony as to whether or not Carrier's call clerk called claimant to report for wrecking derrick work duty at Yeoman Yard rather than Uceta Yard. Carrier says it called claimant on the date in question to report to Yeoman Yard as it did for the rest of the crew, who did on the date in question report to Yeoman Yard. Claimant says he was called to report for duty at Uceta Yard, and he did report to Uceta Yard.

The burden of proof in this instance is upon claimant to prove that Carrier failed to call him to report for duty at Yeoman Yard. There is no dispute in regard to the fact that claimant was called for duty on the date in question. The record is void of any evidence from claimant as to what was told him when called by Carrier's crew clerk, or what immediate effort he made by telephone or otherwise to locate the whereabouts of the wrecker upon learning that it was not at the Uceta Yard on the date in question, inasmuch as there may have been a possibility that claimant could have discovered where the wrecker was located in time for him to have caught it.

Further, this Board has repeatedly adhered to the principle that it is not the province of this Board to weigh the conflicting evidence, and inasmuch

as the record does not furnish any basis for resolving this conflict of fact, we are compelled to dismiss this claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1971.

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