Award No. 6230
Docket No. 6041
2-MP-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. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Letter of Understanding of April 15, 1954, found on page 84 thereof, when Carman J. A. Estes was called from vacation to fill vacancy in wrecking crew at Tuckerman, Arkansas, July 15, 16, 17 and 18th, 1969.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman W. D. Scott in the amount of twenty hours, forty-five minutes (20′ 45″) at punitive rate, which is the actual amount of overtime he would have earned had he been properly called.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a wrecker outfit and regularly assigned wrecking crew at Little Rock, Arkansas, and on July 15, 1969, a wreck occurred at Tuckerman, Arkansas, a point approximately 95 miles northeast of Little Rock, and the wrecker and crew were dispatched to Tuckerman to perform this wrecking service. While the wrecker and crew were engaged in wrecking service, the wrecker turned over and Carman J. L. Marler, who was operating the wrecker, was injured. The wrecker was damaged to the extent that it was not started or used again until major repairs were made at the diesel shop in North Little Rock, Arkansas.

Following the injury of Carman Marler, it was necessary for the carrier to call another member of the wrecking crew from Little Rock, and Carman W. D. Scott, hereinafter referred to as the claimant, is assigned by bulletin to the job of extra wrecker crew member and was available for call; however, instead of the carrier calling claimant to go to the wreck at Tuckerman, Arkansas, they called Carman J. A. Estes from his vacation to replace Carman Marler. Carman J. A. Estes, who was on vacation when called to service, is regularly assigned by bulletin to Heavy Rail Job No. 46, Carman–Welder–

work is proof that he was not called for the purpose of taking the place of a member of the wrecking crew who works on the ground.

Employes' Statement of Claim alleges the carrier violated the controlling agreement, "particularly Letter of Understanding of April 15, 1954, found on page 84 thereof." The letter agreement referred to was the result of claims filed for overtime work on the last two days of an employe's vacation period. In some cases, an employe on vacation sought to protect overtime work on the last two days of his vacation which were rest days of his regular assignment. Claims were filed on behalf of men first out on the overtime board who were not on vacation. The letter agreement made it clear that the employe on vacation was not "available for work until the first regular starting time of his position after the end of his vacation", which meant that he was not eligible for overtime work on the final two days of his vacation which are rest days of his regular assignment.

The foregoing letter agreement has no bearing on the instant dispute. The vacation agreement recognizes that an employe may be required to work on his vacation, and penalizes the carrier for working an employe on his vacation by requiring payment of the time and one-half rate for work performed in addition to vacation pay. This dispute does not involve the selection between two employes equally qualified and eligible for overtime, but involves the necessity for using a wrecking engineer qualified to give advice when the wrecker turned over.

The claim questions the judgment of those responsible for clearing the wreck at Tuckerman and re-railing the wrecker. The employes offer no basis for questioning that judgment or finding that such judgment was erroneous, or in violation of the Agreement. For these reasons, there is no basis for the claim, and it should 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.

The Organization is contending that Carrier violated the provisions of the Letter of Understanding dated April 15, 1954, when it called Carman J. A. Estes from his vacation to replace injured Carman J. L. Marler, who was operating a wrecker, at a derailment at Tuckerman, Arkansas. The Organization is claiming that Carrier should have called Claimant, who is assigned by bulletin to the job of extra wrecker crew member and who was available for call. The Organization further contends that Carman Estes did not perform any service as wrecking engineer inasmuch as the wrecker was inoperative; that if a wrecker engineer was needed, Carman M. H. McGary of the wrecking crew, who was on the job at Tuckerman, could have been used.

The Organization's position is that the following portion of said Letter of Understanding of April 15, 1954 was violated:

> "It was agreed in the conference that an employe's vacation will begin at the starting time of the first working day of his vacation period, and such employe will not be available for work until the first regular starting time of his position after the end of his vacation."

Carrier's defenses to the claim are that Claimant was not called for the work in question because he did not have the necessary experience as wrecking engineer to be qualified for the unusual problem of rerailing the wrecker and assessing the damage thereto; that at the time the wrecker turned over, Carman M. H. McGary had very little training on the new machine, and was not qualified at that time to help check the operating controls and help estimate the extent of mechanical damage to the entire wrecker; that all Carrier wanted was advice from Carman Estes and not physical work and Carrier paid Estes time and one-half in addition to his vacation pay for such advice; the fact that Carman Estes performed no work is proof that he was not called to take the place of a wrecking crew member who works on the ground; the Letter of Understanding of April 15, 1954 means that an employe is not eligible for overtime work on the final two days of his vacation which are rest days of his regular assignment; that the vacation agreement recognizes that an employe may be required to work on his vacation and penalizes Carrier for working an employe on his vacation by requiring payment of time and one-half for work performed plus vacation pay; that this dispute does not involve the selection between two equally qualified employes and eligible for overtime, but concerns the necessity for using a wrecking engineer qualified to give advice when the wrecker turned over.

First, we find that the Letter of Understanding of April 15, 1954 applies to the availability of employes for work on rest days falling during vacation periods. Said Letter of Understanding is not applicable to the issue involved in this dispute. Here, we are confronted with a situation where an employe on vacation was called back to perform work on the dates in question during his vacation. Said employe, Carman J. A. Estes, was paid time and one-half for said work. Carrier, therefore, did not violate the Agreement when it called Mr. Estes back to work during his vacation period, since we find no rule in the Agreement that prohibits Carrier from so calling him back to work during his vacation.

Second, did Carrier violate the Agreement as alleged by the Organization when it did call Mr. Estes back to work rather than Claimant? Claimant is a member of the wrecking crew. But Carrier points out that when a derailment occurred at Tuckerman, Arkansas, the wrecker and wrecking crew at Little Rock were called for wrecking service; that on July 15 the wrecker turned over, resulting in injury to Carman J. L. Marler, the wrecking engineer. Carrier further points out that it needed an experienced wrecking engineer to supervise the rerailment of the wrecker and to assess damage done to the wrecker.

Nowhere is it shown in the record that Claimant was a wrecking engineer, or was qualified to take the place of the injured wrecking engineer, J. L. Marler. Therefore, inasmuch as Claimant was not so qualified to perform the duties of the injured J. L. Marler, then Carrier was not required to

call him for duty in this instance. The fact that Mr. Estes stated that he did not perform any work does not prove that Carrier was in violation of said Agreement. Finding that Carrier was not prohibited from calling Mr. Estes in this instance and finding, further, that Claimant was not qualified to perform the duties of the injured wrecker engineer, J. L. Marler, we must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1971.

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