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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6399
Docket No. 6213
2-A&S-CM-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 154, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(The Alton & Southern Railway Company

Dispute: Claim of Employees:

1. That Carrier violated the current agreement when wrecking crew members R. Farris, V. Hoffman, R. Beswick, R. Drury and G. Abbott were not allowed to accompany the wrecking outfit on its return to home point from derailment on Missouri Pacific Railroad in St. Louis, Missouri December 19, 20 & 21, 1970.

2. That accordingly, Carrier be ordered to additionally compensate the above named wrecking crew members as follows:

R. Farris - thirty-two (32) hours at double time rate, two (2) hours at time and one-half rate, and seven (7) hours at straight time rate.

V. Hoffman - forty-one (41) hours at double time rate.

R. Beswick - twenty-five (25) hours at double time rate and sixteen (16) hours straight time rate.

R. Drury - thirty-four (34) hours double time rate and six (6) hours at time and one-half rate.

G. Abbott - twenty-four hours at double time rate, two (2) hours at time and one-half rate, and fifteen (15) hours at straight time rate.

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 claims payment for five wrecking crew members who were not allowed to accompany the wrecking outfit back to the yard, pursuant to a Memorandum Agreement effective September 1, 1963. This Agreement stated that in the application of Article 51 of the current Agreement between the parties, the provisions of the 1963 Agreement shall apply. It further stated that the 1963 agreement became necessary when the Carrier acquired a diesel powered derrick to be used in wrecking service. Most important, the new Agreement stated, "This Memorandum of Agreement is adopted to provide an understanding between the parties as to how the wrecking crews will be established and paid, when used."

Since this claim grew out of the use of the wrecking outfit for a company other than the carrier herein, that part of the Agreement is worth quoting as follows: "If the wrecker-derrick and crew are used in the services of a company other than the Alton and Southern Railroad, a sufficient number of the wrecking crew will accompany the outfit to the scene of the wreck and its return to home station."

There is nothing ambiguous about the quoted provision. This case falls squarely into the situation that this new agreement was intended to cover: It was foreign service and the wrecking crew was to be with the wrecking outfit going to the scene of the wreck and on returning to the home station, Second Division Awards No. 4972, 5678, 5784.

The Carrier member has referred to Second Division Awards No. 5545 and 6323. In the first Award referred to, the Rule which was interpreted did not require the crew to accompany the wrecking outfit and past practice favored the Carrier. In the second Award referred to, the Rule quoted is not the same as the 1963 Agreement in the present case nor does it cover the foreign service provided for in this Memorandum.

The 1963 Memorandum Of Agreement says that it was adopted, among other provisions, to provide how the wrecking crews will be paid: "--while in such foreign service, the crew will be paid from the time they leave home station until return for all time worked in accordance with existing rules, and will be straight time rates for all straight time hours and overtime rates for all overtime hours, including all time waiting and traveling." "If during the time on the road, not including waiting and traveling time, the crew is relieved from duty and permitted to go to bed for five or more hours, such relief time will not be paid for; provided that in no case shall they be paid for a total of less than eight hours each calendar day."

According to our finding above, the crew should have remained with the wrecking outfit (accompanied it) from 5:00 A.M. on December 19, until 2:00 P.M. on December 21. According to Rule 4 (f) and (g) of the current Agreement between the parties, service beyond 16 hours computed from the starting time of the employe's regular shift shall be paid for at the rate of double time. Also, employe required to render service beyond 24 hours computed from the starting time of his regular shift, shall continue at double time.

The starting time of two members of the wrecking crew for their regular shift was 7:00 A.M. on December 19. Their work was completed at 4:30 P.M. at the wreck and 9:00 P.M. at the yard, on the same day. Therefore, these members of the crew did not complete service beyond sixteen hours. Rule 4 (f) and (g) providing for double time did not apply to them. Similarly, the wrecking crew member whose shift was 3 P.M. - 11 P.M. would not be entitled to double time. Two crew members started their regular shift at 11:58 P.M. and finished at 7:58 A.M. The record is not clear on this so we assume that when these two crew members accompanied the wrecking outfit at 5:00 A.M. on December 19, they had not completed their regular shift but had worked five hours. As a result, they would have completed a total of sixteen and one half hours at the wreck and 21 hours at the yard. Under rule 4(f) they would be entitled to five hours at double time minus straight time for the travel time to the yard, which is not in the record.

Second Division Award No. 6133 provides the reasoning to be applied to the balance of the time from 4:30 P.M. on December 19, up to 2:00 P.M. on December 21. It follows, from that Award that the terminal points for the road emergency service covered by the Memorandum of Agreement would be the time of leaving from and the time of returning to the home point. Relief time is granted, "only for the purpose of granting rest to fit the employe for continuation of the tasks ahead." The only purpose for waiting from 4:30 P.M. on December 19, would have been to accompany the wrecking outfit on its return to the home point. No rest would have been required. Therefore, all the waiting and traveling time after 4:30 P.M. on December 19 to 2:00 P.M. on December 21, would be paid time. Award No. 4972 submitted to support meaning of "accompany", also stated that the time not worked should be at the pro rata rate. We agree, and interpret the Memorandum of Agreement to mean overtime rates to be applied only, for all time worked, although payment is to be made for all time while accompanying the wrecking outfit, including waiting and travel time.

Since no penalty payment is intended, nor is it provided for or claimed, the Carrier is entitled to take credit for any payments made to these employes during the period from 5:00 A.M. December 19 to 2:00 P.M. December 21, in order to avoid paying twice for the same hours.

A W A R D

Claim No. 1 is sustained, Claim No. 2 is disposed of according to the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Kilbourn
Executive Secretary

dated at Chicago, Illinois, this 16th day of November, 1972.