Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6835
SECOND DIVISION Docket No. 6696
2-BNI-CM-'75

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Burlington Northern, Inc.

Dispute: Claim of Employes:

1. That the Carrier violated the current agreement, particularly Rule 7(c), when it improperly compensated Carmen at Vancouver, Washington, the differential between the Carman's straight time rate of pay and wrecking service rate of pay.

2. That accordingly the Carrier be ordered to additionally compensate Carmen R. E. Cormack, J. L. Myers and J. R. Christensen one hour and forty-five minutes the differential between Carman's straight time rate of pay and wrecking service rate of pay.

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.

Claimants all were employed on claim date as regularly assigned Carmen at Carrier's facility in Vancouver, Washington, on the 11:00 p.m. to 7:00 a.m. shift. On November 7, 1972 claimants were utilized to re-rail a car at Carrier's facility in Portland, Oregon. Claimants spent some three and one-half hours (12:30 a.m. to 4:00 a.m.) in the rerailing for which they were reimbursed at the straight time rate. The instant dispute arises because claimants assert their entitlement to the time and one-half rate for the service performed under Rule 7 of the controlling Agreement. Accordingly, they allege a violation by Carrier of Rule 7(c) and each seek payment of the difference between straight time and time and one-half for the three and one-half hours.

The cited Rule 7 reads in pertinent part as follows:

> "(c). Wrecking service employees will be paid at the rate of time and one-half for all time working, waiting or traveling from the time called to leave home station until their return thereto, except when relieved for rest periods. Rest periods shall be for not less than five (5) hours nor more than eight (8) hours, and shall not be given before going to work nor after all work is completed.
>
> * * *
>
> "(e). The above shall not apply to wrecks or derailments in yard limits. Such service shall be paid for on the basis of straight time rate for straight time hours and overtime rate for overtime hours as provided in Rule 6."

Examination of the Agreement language reveals that the dispute turns on whether, as maintained by the Organization, Vancouver, Washington and Portland, Oregon are each located within separate yard limits; or, as asserted by Carrier, they comprise a single terminal surrounded by common yard limits. Clearly, if they are within one set of yard limits then they are taken out of the coverage of Rule 7(c) by the exception contained in 7(e).

Carrier argues at the outset that the claim is not properly before us as it has been "altered and manipulated". We note that the damages sought are differently stated in the claim before us than on the property. It is not our design to condone or encourage either sloppy pleadings or inadequate handling on the property. In the instant case, however, we find no prejudice to the Carrier in defending against the claim and no such material variance in the claim as to divest us of authority to hear and determine it. See Third Division Award 3256. Hence we will not dismiss the case on the procedural ground urged by Carrier.

Turning to the merits of the case, the Organization insists that Portland lies outside the home station and beyond the yard limits of the Vancouver yard. In support of this assertion, the Organization shows that prior to the merger of the"Northern Lines" on March 3, 1970 Vancouver and Portland were considered separate points each with its own yard limits. The Organization contends that this status prevailed after the merger until January 15, 1973 - the effective date of an agreement between Carrier and an operating brotherhood consolidating switching limits of the Portland-Vancouver Terminal. Further, the Organization urges consideration of the switching limits agreement as positive, probative evidence that before January 15, 1973 there were separate yard limits at Vancouver and Portland. (Emphasis added)

Carrier, on the other hand, argues that since the effective date of the merger, March 3, 1970 (I.C.C. Finance Docket No. 21478, 331 I.C.C.) consolidation of facilities produced a single Portland-Vancouver Terminal within one set of yard limits. Moreover, Carrier asserts that the January 15, 1973 operating employees' agreement is not applicable to Carmen and does not affect them as to the application of Rule 7 of the Carmen's Agreement.

Upon careful consideration of the foregoing, we are constrained to deny the claim herein. The Agreement of January 15, 1973 involved not only a different subject matter but a different Organization and it is of no assistance to us in construing Rule 7 of the Carman's Agreement. We also have studied Awards 4154 and 5051 cited by the Organization and do not see that they indicate a conclusion contrary to the one we have reached. Whatever may have been the case before merger, this record supports the conclusion that since March 3, 1970 Portland-Vancouver is for purposes of Rule 7(c) and (e) one common terminal within a set of defined yard limits. Accordingly, claimants performed work on a derailment within yard limits on claim date and under Rule 7(e) are not entitled to more than the straight time rate they received.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of March, 1975.