

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the carrier violated Rule 10-5, improperly relieving the following regularly assigned wrecking crew members on the following dates and times:

Adam Ziegler	February 1 8:00 p.m. to 12:00 a.m.	4 hrs.
	February 2 12:00 a.m. to 8:00 a.m.	8 hrs.
	February 2 8:00 p.m. to 12:00 a.m.	4 hrs.
	February 3 12:00 a.m. to 8:00 a.m.	8 hrs.
	February 5 12:00 a.m. to 8:00 a.m.	8 hrs.
	Total	32 hrs.
Ernest Hanson	February 2 12:00 a.m. to 8:00 a.m.	8 hrs.
	February 2 8:00 p.m. to 12:00 a.m.	4 hrs.
	February 3 12:00 a.m. to 8:00 a.m.	8 hrs.
	February 5 12:00 a.m. to 8:00 a.m.	8 hrs.
	Total	28 hrs.
George Hoffman	February 1 8:00 p.m. to 12:00 a.m.	4 hrs.
	February 2 12:00 a.m. to 8:00 p.m.	8 hrs.
	February 2 8:00 p.m. to 12:00 a.m.	4 hrs.
	February 3 12:00 a.m. to 8:00 a.m.	8 hrs.
	February 5 12:00 a.m. to 8:00 a.m.	8 hrs.
	Total	32 hrs.
Harlan Bayman	February 1 9:30 p.m. to 12:00 a.m.	2½ hrs.
	February 2 12:00 a.m. to 6:00 a.m.	6 hrs.
	February 2 10:00 p.m. to 12:00 a.m.	2 hrs.
	February 3 12:00 a.m. to 6:00 a.m.	6 hrs.
	February 5 12:00 a.m. to 6:00 a.m.	6 hrs.
	Total	22½ hrs.
Jerry Erickson	February 1 8:00 p.m. to 12:00 a.m.	4 hrs.
	February 2 12:00 a.m. to 8:00 a.m.	8 hrs.
	February 2 8:00 a.m. to 12:00 a.m.	8 hrs.
	February 3 12:00 a.m. to 8:00 a.m.	8 hrs.
	February 5 12:00 a.m. to 8:00 a.m.	8 hrs.
	Total	32 hrs.

2. That accordingly, the Carrier be ordered to additionally compensate the above-mentioned carmen the above specified amounts of hours at the time and one-half 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 employee or employees involved in this dispute are respectively carrier and employee 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.

On the 31st of January and the 1st of February, 1974, the claimants, carmen, who are the regularly assigned members of the Harvey, North Dakota Wrecking Crew, worked a wreck at Fairmont, North Dakota. The crew tied up at Fairmont at 8:00 p.m. on the 1st of February after having completed work on the wreck at that point. On the following morning at about 8:00 a.m., the claimants departed from Fairmont for Fullerton, North Dakota, where they arrived the evening of the second and were put to rest at 8:00 p.m. until 8:00 a.m. the following morning when they were put to work. The crew worked until 8:00 p.m. when they were put to rest. The claimants worked from 8:00 a.m. on the 4th until midnight when the work at the wreck site was completed and they were tied up for a rest. At 8:00 a.m. on the 5th they were transported to a wreck site at Kulm, North Dakota.

At issue is the time spent by claimants while being tied up after completion of the work at the Fairmont and Fullerton sites and before departing for the Fullerton and Kulm sites respectively.

The particular rule in question is Rule Ten (10), particularly paragraphs 3 and 5 which read as follows:

- "3. If, during the time on the road a man is relieved from duty and permitted to go to bed five (5) or more hours between the hours of 10:00 o'clock p.m. and 6:00 o'clock a.m., or during his normal rest period, if employed on other than first shift, such release will not be paid for, provided that, in no case, shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employee from making his regular daily hours at the home station.

"5. Wrecking service employees will be paid under this Rule, except that all time working, waiting, or traveling on rest days and holidays will be paid for at rate of time and one-half, and all time working, waiting or traveling, on assigned work days after the recognized straight time hours at home station will also be paid for at rate of time and one-half."

Are the times that the claimants were put to rest from 8:00 in the evening on the 1st of February to 8:00 in the morning on the 2nd of February and from 8:00 in the evening on the 2nd until 8:00 in the morning on the 3rd and from 12:00 midnight on the 5th until 8:00 a.m. on the 5th waiting time so as to be compensable under paragraph 5 of Rule 10 or rest time under paragraph 3 for which no additional compensation is required?

It is the position of the carrier that the assignment was multiple in nature and should be treated as a unit in considering whether the relief periods were compensable as waiting time. The awards furnished support both the position of the carrier and the organization on this point.

Award 2791 states that "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." Award 4958 reads in part, "However, the carrier contends that this case differs in that the claimants still had a wrecking service to perform before returning home, and that their active work had therefore not been completed. But the travel and waiting time between two wrecks is no different from that between a wreck and the home point. We therefore conclude that the claim should be sustained."

There are several awards that hold that time spent resting after work has been completed on a wreck is properly "waiting time". See Awards 4931, 5172 and 6972. Award 6972 has certain dicta in it, however, that seems to indicate that if a crew is truly in need of rest, a bona fide rest period may be allowed.

The carrier's position that the assignment to work on multiple wrecks is to be considered as a unit until work is completed is supported, among others, by Award 1637 which reads in part, "The terminal points of the road emergency service covered by the Rule are the time of leaving and 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 Rule." Award 6133 quotes Award 1637 with approval and further states "The language of the Rule clearly implies that it was not intended to exclude multiple tasks."

We find the reasoning of Award 6133 to be sound. There is nothing in the agreement that limits the carrier in its assignment of a wrecking crew

to the performance of service at a single location. The assignment of a wrecking crew to multiple tasks at various locations appears to be within the prerogative of the carrier.

The issue to be decided then is whether the time the crew spent tied up while on the assignment was, in fact, relief time such as was required to fit the crew to perform the balance of the assignment or waiting time assigned for the convenience of the carrier's schedule. The rest assigned by the carrier in the circumstances which gave rise to the instant case followed either an entire day of work or travel. We do not find that the assignment of the rest time in this matter is unreasonable or unwarranted when considered in relation to the work and travel schedules. We note that the employees have alleged that they were tied up by the carrier due to the requirements of the Hours of Service Act. The organization has offered no proof as to the relationship of the rest schedule and the requirements imposed on the carrier due to the Hours of Service Act.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of February, 1979.