Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8444
Docket No. 8373
2-CRR-CM-'80

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (Brotherhood of Railway Carmen of the United States and Canada

(Clinchfield Railroad Company

Dispute: Claim of Employes:

1. That under the terms of the controlling agreement, the Clinchfield Railroad Company, hereinafter called the Carrier, improperly compensated the regularly assigned members o f the Erwin Wrecking Crew composed of the following Carmen:

D. A. McNabb,	Engineer
Reid Erwin,	Fireman
Billie Allen Jr.,	Groundman
R. L. Hampton,	Groundman
H. J. Grindstaff,	Groundman
B. G. Bailey,	Cook

hereinafter referred to as the claimants, when all but B. G. Bailey were denied compensation between the hours of 8:00 p.m. on May 4, 1978 and 7:00 a.m. on May 5, 1978, and, B. G. Bailey was denied compensation between the hours of 10:30 p.m. on May 4, 1978 and 5:00 a.m. on May 5, 1978.

2. That accordingly, the Carrier be ordered to compensate the Claimants as follows: D. A. McNabb, R. Erwin, B. Allen, Jr., R. L. Hampton, and H. J. Grindstaff - 11 hours each at the time and one-half rate, and B. G. Bailey - 6 1/2 hours at the time and one-half 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.

Claimants were regular members of the Erwin wrecking crew which, from May 1, 1978 to May 5, 1978, was assigned to pick up the cars of a previously derailed train in Spruce Pine, North Carolina, a distance of approximately fifty (50) miles from Claimants' home terminal of Erwin, Tennessee. As the dispute concerns only the last two days of this particular assignment, details pertaining to the first three days thereof will be disregarded.

On May 4, 1978, the wrecking crew went on duty at 7:00 AM, their regular starting time at their home terminal, and worked until 7:00 PM at which time they were relieved from duty. Claimants spent the night on the scene in the camp car as they had done on the three previous evenings. At this point, however, Claimants contend that their work, involving rerailing the derailed cars and making the hospital train ready for movement, was completed and said train, therefore, could have been moved at that time. Carrier, on the other hand, contends that the cleanup and readying work was not completed at 7:00 PM on May 4, and the crew was relieved from duty at that time to take a rest so as to be ready to resume and complete their task on the next morning.

On May 5, 1978, the crew went on duty at 7:00 AM and departed Spruce Pine at 8:30 AM, arriving at Erwin, Tennessee, their home station, at 1:50 PM that same day. Carrier maintains that when the wrecking crew came on duty at 7:00 AM that day, they completed the final tasks necessary for loading of the derailed cars onto the hospital train and also for readying the hospital train itself for movement. Additionally, Carrier argues that wrecking crew members remained "in service" while returning to the Erwin yard in order "to perform service as may be required in keeping the loaded wrecked cars adjusted or to again pick them up and secure them for continued movement".

As was noted previously, however, Claimant contend that all wrecking service duties, including preparing the hospital train for movement, were completed at 7:00 PM on May 4, 1978.

Claimant's Organization maintains that the period of time between 8:00 PM on May 4, 1978 and 7:00 AM on May 5, 1978, rather than being regular relief time, as alleged by Carrier was in reality waiting time, and therefore must be compensated at the rate of time and one half. Organization further argues that the hospital train could have been moved on t he evening of May 4, 1978, but the train crew, which worked the entire day with the wrecking crew, had worked the maximum number of hours permitted by the Hours of Service Act, and, therefore, was unable to transport the wrecking crew and the hospital train back to Erwin, Tennessee that evening.

In support of its position Organization offers Rule 5 of the parties' current agreement which states:

"EMERGENCY SERVICE - ROAD WORK

Rule 5. An employee regularly assigned to work at a shop, enginehouse, repair track or inspection point, when called for emergency work away from such shop, enginehouse, repair track, or inspection point, will be paid from the time

"ordered to leave home station until his return, for all time worked in accordance with the practice at home station, and straight time rate for all time waiting or traveling.

If, during the time on the road, a man is relieved from duty and permitted to go to bed, or rest, for five (5) or more hours, such relief time 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 home station. Where meals and lodging are not provided for by the Railroad, necessary expenses will be allowed.

Employees will be called, as nearly as possible, one hour before leaving time, and on their return will deliver tools at point designated.

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

Continuing on, Organization argues that the language of Rule 5 is clear and unambiguous, and by application thereof, Claimants were, in actuality, on waiting time after they had completed their work on May 4, 1978, and not on relief time as Carrier alleges.

Additionally, Organization argues that in the event that there were past practices which are contrary to the clear language of Rule 5 (and Organization does not concede this point), then said past practices must be disregarded since "...custom or past practice are of no probative value in determining the meaning of a labor agreement if the meaning thereof is clear and unambiguous". (Second Division Awards Nos. 3873 and 4591).

As its final argument, Organization maintains that Carrier's contention regarding the operating of hospital trains during darkness hours was not initially raised when this case was handled on the property, and, therefore, should not be considered at this point.

Carrier argues that insofar as requisite wrecking crew work was not completed at 7:00 PM on May 4, 1978, Claimants, at that time, were relieved from duty simply for the purpose of taking their rest break prior to resuming their duties on the next morning. Thus Carrier maintains that for the period of time in question, Claimants were on "rest break" rather than "waiting time" or "travel time" as Claimants and their Organization allege. Carrier also contends that Claimants continued to be "in service" during the return trip from Spruce Pine to Erwin since they were not only assigned to prepare the hospital train for movement, but also "...to perform such service as became necessary during the movement of the cars...".

After carefully analyzing the complete record which has been presented herein, this Board is of the opinion that the resolution of this instant dispute is predicated upon two question: (1) was wrecking crew service performed by Claimants on the morning of May 5, 1978, as alleged by Carrier; and (2) did Claimants remain "in service" during the return of the hospital train from Spruce Pine to Erwin? Given the language of Rule 5, as well as several awards by this and other Boards relative to similar disputes, an affirmative response to either of the aforestated questions would necessitate a favorable ruling for Carrier since said Rule clearly establishes that "relief time" is applicable when an assignment is not completed but instead will be resumed at the end of the rest period; whereas "waiting time/travel time" applies to situations when an assignment is completed and the employee(s) is/are waiting to travel or are traveling back to the home terminal or to the next assignment (See: Second Division Awards Nos. 790, 1028, 1048, 1078, 4152, 4958, 5007, 5767, 6133 and 6972). Thus, in this instant case, if the wrecking crew performed wrecking crew duties before the hospital train left Spruce Pine on the morning of May 5, 1978, or if the crew in fact, remained "in service" while the hospital train was enroute to Erwin and performed "attendant duties and service", then said assignment would not have been completed at 7:00 PM on May 4, 1978 as Claimants contend; and moreover, the time between 7:00 PM and 7:00 AM would be considered as "rest time" and, therefore, noncompensible.

Since the second question of the two posed above appears to be the less difficult to resolve, let us dispose of this matter first.

Despite Carrier's contention that "... the parties have always considered (that) the derrick crew members are actively engaged in service, rather than simply traveling because their presence on the hospital train is required for service rather than for transportation", this Board cannot subscribe to this interpretation since it has been clearly established by many Boards in this and other Divisions that wrecking crew work pertains to the specific work which is performed at the wreck site itself and not to any other incidental work which might be performed by the wrecking crew while returning to their home terminal. Of particular significance in this regard are Second Division Awards Nos. 3925, 4958 and 5767 wherein Referees Johnson and Dorsey respectively concluded:

> "It is the Carrier's contention that the condition of damaged equipment in the hospital train was such that it was necessary to travel by daylight and observe its condition; however, the train was moved by a transportation department crew and not by the wrecking crew, which had completed its work at the wreck.
>
> This Division has held in prior awards that provisions like Rule 7-2 for relief from duty on the road relate to actual working periods and not to time waiting or traveling after the work has been completed (Second Division Award No. 3925)." (Emphasis added by Board).

Referee Johnson, again in Second Division Award No. 4958, reiterated:

> "This Division has repeatedly held that rest periods without pay are proper if given before the actual work has been completed, but not during waiting or travel time afterward." (Emphasis added by Board).

Also, Referee Dorsey, in Second Division Award No. 5767, oncluded:

> "In the present case, Claimants were called to perform a specific duty, namely, to work on a derailment. After that duty had been completed, they were on travel or waiting time until they had reached their home terminal." (Emphasis added by Board).

In this instant dispute, Carrier argues that other situations have occurred previously which are similar to that which is disputed herein, but which were not grieved by Organization at that time. Carrier argues, therefore, that the parties have established a past practice regarding this issue, and thus, Carrier's position should prevail.

Once again, this Board is not persuaded by this argument since it is a well accepted tenet of labor-management relations and labor law, particularly in the railroad industry, that past practices which conflict with clear and unambiguous contractual language will not be sustained (See: Second Division Awards Nos. 3873 and 4591).

One last point on this particular issue before continuing further.

It is significant to note that had this Board found in favor of Carrier's argument on this particular issue, then such a finding could have inevitably led to the nullification of Carrier's contractual obligation to pay travel time/ waiting time to any wrecking crew member when returning from an assignment. Obviously, such an application was not contemplated by the parties when they negotiated the language contained in Rule 5. More importantly, however, since such a construction would have been a most radical departure from the traditional standards of contract interpretation within this particular industry, this Board can only see fit to avoid any such ruling which would produce an extreme or absurd outcome, or one which would work to abrogate a right which clearly exists within the parties' collective bargaining agreement.

Having determined that the wrecking crew was not "in service" on their return to Erwin, Tennessee from Spruce Pine, North Carolina on May 5, 1978, our attention now turns to the second question of whether Claimants performed any wrecking crew service on said morning prior to the hospital train's departure.

Claimants contend that no such work was performed; Carrier contends otherwise. The record in this regard shows simply that Claimants reported to duty at 7:00 AM on said morning and that the hospital train departed from Spruce Pine at 8:30 AM. Absent any more substantial showing of proof that Claimants did, in fact, perform wrecking crew duties between 7:00 AM and 8:30 AM on said morning, Carrier, being the moving party concerning this aspect of this instant dispute, has failed to

sustain its burden of proof relative thereto. Given this consideration, this Board is compelled to conclude that any work which may have been performed in readying the hospital train for movement was performed by the train crew, and any work which may have been performed by the wrecking crew at that time was only minor in nature and not specifically related to the derailment assignment itself (See: Second Division Award No. 5767).

A W A R D

Claim sustained.

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