Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8802
SECOND DIVISION Docket No. 8729
2-SCL-CM-'81

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling Agreement by their failure to pay the Tallahassee, Florida wrecker crew for the time they improperly placed on rest from 3:05 p.m. August 16, 1978, until 5:30 a.m., August 17, 1978.

2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carmen M. L. Burks, H. B. Shelfer, M. Hardy, G. W. Beal, J. Wilford and J. D. McKendree for 13 hours and 50 minutes at overtime rate, and Carmen L. C. Spears for 5 and 1/2 hours at overtime 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.

On August 16, 1978, the Tallahassee, Florida wrecker was called to respond to the derailment of a train at Plains, Georgia. When the wrecker arrived at Preston, Georgia, the point nearest the derailment, it was determined that track repairs needed to be completed before the wrecker could get in place to clear the derailment. Since track repairs would not be completed before the early morning hours of August 17th, the crew was relieved "for rest" until 5:30 a.m. on August 17th.

The organization claims that Carrier violated Rules 8 and 103 of the Agreement by failing to pay the crew for the time they were placed "on rest". It seeks 13 hours and 50 minutes pay at the overtime rate for Carmen M. L. Burks, H. B. Shelfer, M. Hardy, G. W. Beal, J. Wilford and J. D. McKendree, and overtime pay for 5 and one-half hours for Carmen L. C. Spears.

Rule 103 of the Agreement provides, in pertinent part, that wrecking crews will be paid pursuant to Rule 8.

Rule 8 - Emergency Service Road reads:

"(a) An employee regularly assigned at a shop, engine hours, repair track, or inspection point, when called for emergency road service away from such shop, engine house, repair track or inspection point, will be paid from the time called to leave home station, until his return for all service rendered in accordance with the practice at home station, and will be paid straight time rate for straight time hours and overtime rates for overtime hours for all time waiting or traveling.

(b) If during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief 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 by railroad actual necessary expenses will be allowed. When an employee is required to go to shops for tools or material before leaving home station he will be paid for the time necessary to cover such service.

(c) Wrecking service employees will be paid in accordance with this rule."

In Award No. 8434, the Board was called upon by the Organization and the Carrier to decide the same underlying dispute as is presented herein. Namely, it is compensable "waiting time" or not compensable "resting time" when a wrecking crew is called to the scene of a derailment but is unable to commence work at the scene for reasons other than their need for rest.

In accordance with Award No. 8434, we are persauded that the purpose of the rest period described in Rule 8 is to provide employes with sufficient time off to enable them subsequently to perform their duties. The period in question herein was not a relief from duty due to fatigue. Rather, it was time spent waiting to perform the duties for which the wrecking crew had been summoned. Accordingly, the Carrier erred in failing to pay the grievants for this waiting time.

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 28th day of October, 1981.

DISSENT OF CARRIER MEMBERS
TO
AWARD 8802 (DOCKET 8729)
(Referee Scheinman)

The Majority in this Award completely misconstrued the language and intent of Rule 8, the Emergency Service Road Rule in concluding that the time Claimants were relieved for rest under paragraph (b) of the Rule was compensable as waiting time. The facts of record simply lend no support whatsoever to this conclusion.

While not specifically set forth in the Award, it should be noted that Claimants reported for duty at 7:00 A.M. on August 16, 1978, and arrived at Preston, Georgia, approximately 10 miles from the site of the derailment, at 3:05 P.M. on the same date. At this time it was determined that before the wrecker could get to the scene of the derailment certain track repairs had to be effectuated and that such repairs would not be completed until the early morning of August 17, 1978. In fact, track repairs were not completed until 5:30 A.M., August 17, 1978, at which time Claimants reported back on duty to perform their wrecking service.

The Majority incorrectly found that the time from 3:05 P.M., August 16, 1978, to 5:30 A.M., August 17, 1978, was compensable waiting time under Rule 8(a). While the Majority correctly stated that the "....purpose of the rest period described in Rule 8 is to provide employes with sufficient time off to enable them subsequently to perform their duties", it somehow made the convoluted determination that Claimants in the case at bar did not require rest. As hereinbefore stated, Claimants had reported for duty at 7:00 A.M. on August 16, 1978, and logically assuming that they

were awake and preparing for work at least one or two hours prior to this time, it seems inconceivable that Claimants would have been able to effectively and safely perform the wrecking service after having been awake for a twenty-four hour period prior to the inception of the actual work at the derailment site.

Furthermore, the clear and unambiguous language of Rule 8(b) expressly permits the Carrier to relieve an employee for rest for a period of five hours or more and that such period of rest will be without compensation. There are no provisions in the Rule restricting the Carrier's right to determine when and if the employee needs rest. The Majority, in the guise of interpretation, added a restriction not provided for in the Agreement. It is hornbook that this Board is only empowered to interpret the Agreement as written and that it has no jurisdiction to add to or amend the terms of an Agreement, such power being reserved exclusively to the negotiating parties. Second Division Awards Nos. 6012, Ritter - 6091, Gilden - 6492, Bergman - 6581, 6948, Lieberman - 7012, 7068, Eischen - 7077, Rose and 7082, Twomey are representative of the myriad of Awards upholding this principle.

In reaching its decision, the Majority placed major emphasis on Award No. 8434 (Roukis) involving a similar dispute between the same parties at bar. Admittedly, Award No. 8434 sustained a similar claim, however, Award No. 8434 was palpably erroneous inasmuch as its reasoning, or better stated lack of same, was completely misplaced. The Referee in Award No. 8434 relied on Second Division Awards Nos.

4115 and 6133, however, a careful perusal of those Awards clearly indicates that the factual situations giving rise thereto were not similar to the facts of record in either Award 8434 or this Award 8802.

The claimants in Award 4115 (Johnson) had completed six days of wrecking service at a derailment site and on their deadhead trip back to the terminal were put in for rest in anticipation of further service being required of them on the next day. Since no evidence was submitted showing that the anticipated work materialized, the Referee sustained the claim for the time spent while on rest. The "Findings" in Award 4113 clearly show that the rationale behind the sustaining decision was that the work had been completed and such was expressly stated as follows:

> "It has been held by this Division in prior awards that provisions like Rule 9(b) 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. Awards 790, 1028, 1048, 1078 and 1971." (Emphasis supplied)

In both Award 8434 and the instant Award, Claimants were put in for rest prior to the performance of actual wrecking service.

Similarly, the claimants in Award No. 6133 (McPherson) had performed service at the derailment site after which they were put in for rest due to lack of transportation. Again, this type of situation was not present in Award 8434 or in the Award rendered by the Majority in the present dispute.

Without in any way conceding that the "Findings" in Awards Nos. 4113 and 6133 were correct in their interpretations, it is obvious that the factual circumstances [illegible] were not remotely

similar to those in Award 8434 and thus, Referee Roukis' reliance on those Awards was improper and did not present an accurate interpretation of Rule 8. Unfortunately, the Majority in this dispute opted to base their decision on this foundation made of sand.

Hence, we dissent:

J. M. FAGNANI

D. M. LEFKOW

J. E. MASON

J. R. O'CONNELL

P. V. VARGA