

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- (a) When Hoesch Crew Members R. G. Barnett, D. H. Dean, and E. M. Sanford, were called from Decoursey, Kentucky to replace a pair of wheels under T.T.A.X. 970386 that was on the North Main at Butler, Kentucky on November 12, 1978, it is the Employees contention that this was incorrect and that Decoursey Carmen P. C. Cummins, R. F. Johnson and R. D. Cummins were the proper Carmen to be called from the Decoursey Shop (Road) Miscellaneous Overtime Board to replace the pair of wheels, and
- (b) It is requested that the Louisville and Nashville Railroad compensate Decoursey Carman R. D. Cummins eight (8) hours at the time and one-half rate account his not being called for the line-of-road work performed which is contractually properly compensatable in line with the provisions of Rule 11 (a) of the controlling Agreement, Carmen P. C. Cummins, and R. F. Johnson worked their regular hours of assignment during the hours of the violation and were thus not due any additional time.

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.

Claimant alleges that he should have been called to service on a Sunday to serve as a crew member on the Hoesch equipment which was dispatched to replace a pair of wheels under TTAX 970386, by virtue of his being next in line on the Shop (Road) Miscellaneous Overtime Board.

Carrier disputes the Claimant's allegation based upon the existence of a special agreement between the parties, effective June 1, 1974, entitled "Hoesch Equipment Crew" and more particularly Paragraph 2 thereof.

The entire Hoesch Equipment Crew Agreement is as follows:

"HOESCH EQUIPMENT CREW

In order to have a uniform system in handling the Hoesch Equipment, it is hereby agreed that - -

1. Effective June 1, 1974, there will be one Lead Carman and two Carmen assigned to the Hoesch Equipment by bulletin. These employees must be qualified to operate the Hoesch Equipment, and Hi-rail truck on the main line, and be knowledgeable with applicable transportation department rules and regulations. The Leadman will be responsible for reporting any needed repairs to the Hoesch Equipment.
2. When available, the crew will accompany the Hoesch Equipment when used outside of yard limits. Within yard limits members of the crew and/or other qualified Carmen on duty may be used. Crew will be paid under Rule 11(d) when service is outside of yard limits.
3. If additional Carmen are needed to handle the Hoesch Equipment, they will be called from the Miscellaneous Overtime Board.
4. If the Hoesch Equipment is used for Emergency Road Work, Rule 11 will govern, except that the employee or employees must be qualified to operate the equipment.
5. No carman should hold assignments on both the Wrecker Crew and the Hoesch Equipment Crew, except where there are not sufficient carmen employed or where all other carmen have declined such an assignment."

Claimant has consistently averred that no "emergency" existed and Carrier finally conceded this, but insists it really doesn't make any difference since Paragraph 2 of the Hoesch agreement clearly authorizes the Carrier to use the crew assigned to the equipment when it is used outside of yard limits.

Claimant cited Paragraph 4 in support of its contention that Paragraph 2 doesn't apply when Emergency Road Work is involved. In this latter event, Paragraph 4 provides that Rule 11 (now 12) will govern. Claimant further alleges that the application of Rule 11 would require the Carrier to select the crew from the overtime board rather than use the assigned crew.

In his argument, the Claimant is alleging that the words "Emergency Road Work" include work when there is not an emergency. This is referred to as "every day" Emergency Road Work.

While it is difficult to completely understand the distinction that is being

made, it is apparently requiring the conclusion that the regular Hoesch Crew can be used only when there is a so-called "real" emergency. However, Paragraph 4 does not make that distinction and if the Claimant's theory is correct, then it could be interpreted to include a real emergency as well as the less than real emergency that the Claimant's theory contemplates. In that event, it would contradict Paragraph 2 which is not by its terms limited to emergencies and contemplates service outside of yard limits by the assigned crew.

Claimant attempts to support his position by the reference in Paragraph 2 to payment of the regular crew under Rule 11(d) when service is outside of yard limits.

Rule 11 entitled, "Emergency Road Work" is as follows:

"11(a) An employee regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track, or inspection point, will be paid from the time designated 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; except on rest days and holidays time and one-half will be paid for all time.

11(b) If during the time on the road a man is relieved from duty and permitted to go to bed for 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 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 the railroad, actual necessary expenses will be allowed.

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

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

It is noted that 11(d) refers to "wrecking service employees". From this stems the argument that since the regular crew would be paid as wrecking service employees, then the only work covered by Paragraph 2 is wrecking service. From this, we recognize the argument that the use of this equipment with its regular crew is to be limited to the "emergency" wrecking service.

While this argument is not completely unfounded, it is too tortuous a route to follow to support the Claimant.

The reference to 11(d) is obviously there to describe the payment procedure when the assigned crew was utilized. This reference does not, in itself, cause a limitation as to when the assigned crew will be used. This limitation would have to be more specific to support the Claimant.

The reference in Paragraph 4 to "Emergency Road Work" which was limited by the Claimant to non-emergency situations is not sufficiently supported by the language of the agreement or other documents or awards to influence the decision of the Board.

In the course of the consideration of the matter on the property, a memorandum of agreement between the Organization and a lesser official of the Carrier seeking to provide further guidance to the parties in the use of Hoesch equipment was presented but is disregarded by this Board as not having been authorized by the appropriate official of the Carrier.

The parties have agreed that the Board's decision in this matter would govern other grievances now being considered by the parties. The correspondence exchanged on the property between the parties in those matters has been provided to this Board and reviewed by it.

Both instances involved replacing wheels and the Organization asserts that this work is not to be done by the assigned Hoesch crew.

The Board accepts the position of both parties that no "emergency" existed and that Paragraph 2 will apply without limitation authorizing the Hoesch Equipment to be accompanied by the regular crew under these circumstances.

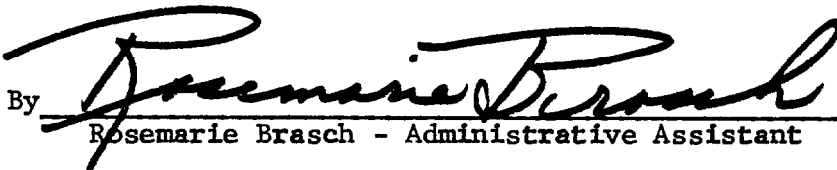
For the reasons set out herein above, this Board will deny the claims.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of January, 1983.