

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

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

Dispute: Claim of Employees:

1. That the Carrier violated the current Agreement when Carmen C. H. Johnson, B. D. Hand, J. H. Vernon, J. R. Brewer and W. M. Carter were not allowed to accompany the wrecking outfit on its return trip to Birmingham, Alabama on April 13, 1979.
2. That accordingly the Carrier be ordered to compensate the aforesaid employees fourteen and one-half (14 1/2) hours pay each at the rate of time and one-half.

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 were given due notice of hearing thereon.

The basic facts are not in dispute. On April 12, 1979, the Birmingham, Alabama wrecking crew was called at 10:00 A.M. to accompany the wrecking crew to clear a derailment at Edwardsville, Alabama. The wrecking crew with outfit cars departed Norris yard, in Birmingham, at 11:10 A.M. and arrived in Edwardsville at 6:15 P.M. The wrecking service was completed at approximately 8:30 P.M. on April 12 and the Claimants were transported to a motel for the night arriving there at 10:15 P.M. The next day, April 13, the Carrier's general foreman came to the motel, picked up the Claimants and returned them to Norris Yard by highway vehicle. They were relieved from duty at 2:00 P.M. on the same day. The wrecking outfit arrived at Norris yard at 4:30 A.M. on April 14, 1979. The Carrier contends as a factual matter that it was impossible to return the wrecking outfit to Birmingham upon the crew's rest due to the high water condition and later due to the heavy train traffic problems after service was restored. Some of these problems included crew shortages, blocked out passing tracks, constant traffic and constant traffic of waiting trains. The Claimants are requesting 14 and 1/2 hours pay at the time and one-half rate for not being allowed to accompany the outfit back to the headquarters point of Norris yard, Birmingham, Alabama.

The Organization believes that 14-1/2 hours claim is justified under the agreement and long standing practice at Birmingham. They also note the same issue has been before the Board previously. Focusing on the word "accompany" they contend that the Board has consistently held that "accompany" means "to go along with someone or something." They believe that Second Division Award No. 4972 supports their position. This Award stated in part as follows:

"'Accompany' means 'to go along with someone or something. Accompany implies closeness of association***.'
Webster's New Collegiate Dictionary, Second Edition.

It is well settled by the awards of all divisions of this Board that the Rules must be given full effect according to the intent of the parties as expressed by their words used. Consequently, as this Division has repeatedly held in Awards 3190, 3365, 3864, 4505, 4509, 4564, 4910, 4932 and others, the claim must be sustained. Pay for time not worked is at the pro rata rate. See Awards 1362 and 1702."

They also cite Second Division Awards 5678, 7787 and 8402 which discounted Second Division 6332 cited by the Carrier. The Board stated in Second Division Award 8402:

"The Board, in Award 6332 also discussed Awards 5678 and 5784, sustaining awards which involved claimants who did not accompany the outfit going to and coming from a wreck or derailment site. Awards 5678 and 5784 were cited by Petitioner in the case resulting in Award 6332 and in the instant case.

In discussing Awards 5678 and 5784, the Board in Award 6332 commented:

'Award 5678 (Referee Ritter) sustained the claim citing awards involving time to a wreck site without discussing the question of the application of Rule 113 to the return trip. Award 5784 (Referee McGovern) sustained a claim also without considering the applicability of Rule 113 to the return trip.'

It must be pointed out, however, that Award 5784 did consider the return trip in its Findings in sustaining the claim.

'The Organization 'Arguendo' states the wrecking crew must 'physically' accompany the outfit. The language of the rules is clear and precise and in the absence of mutually agreed upon interpretation by both parties means precisely what it says. The crew will accompany the outfit outside yard limits. This connotes the trip to the derailment and back to the home station. Compensation time therefore should be from 7:00 A.M., the time of departure from Spokane to 7:00 P.M., the time of arrival back at Spokane. ...' (Underlining added)

"The Board, in Award 5678 sustained a claim that the Carrier had failed to permit Claimants to accompany the wrecking outfit while in transit to and from the scene of derailment outside of yard limits, citing 'The overwhelming number of awards sustaining the Organization's contention in this case, ...'. We are inclined to follow the Board's reasoning in this and similar cases and, therefore, we will sustain the claim."

The Carrier cites, as mentioned above, Second Division Award 6332 which involved a four hour and thirty minute delay between the arrival of the crew and the outfit. It stated in pertinent part:

"The principle of allowing compensation for the time a wrecking outfit departs its yard and arrives at the wreck or derailment site is well established in prior awards and should not be overturned by this Board. These prior awards rely on the phrase 'will accompany the outfit' to sustain claims. This phrase, however, is prefaced with the clause 'when wrecking crews are called.' The term 'called' means 'to summons.' Webster's New Collegiate Dictionary. Read in its entirety Rule 113 means that when crews are 'called' or 'summoned' to work they shall 'accompany the outfit.' Rule 113 does not state that when crews complete an assignment they shall 'accompany the outfit.'

The Organization cites numerous cases to support its contention but most of these awards involve fact situations with claimants who were called and did not accompany the outfit to the wreck site.

Second Division Awards 5678 and 5784, however, involved claimants who did not accompany the outfit going to and coming from a wreck or derailment site. Award 5678 (Referee Ritter) sustained the claim citing awards involving time to a wreck site without discussing the question of the application of Rule 113 to the return trip. Award 5784 (Referee McGovern) sustained a claim also without considering the applicability of Rule 113 to the return trip.

The language of Rule 113 is clear and unambiguous. When wrecking crews are called they will accompany the outfit to the wreck or derailment site or must be compensated for this time if another method of transportation is used. Rule 113 does not provide for crews to accompany an outfit on a return trip. This Board does not have the authority to add to, alter or modify a contract provision so the claim must be denied." 2 NRAB, Awd. 6332, Cm v. B&M

Indeed there are awards involving identical and similar rules and circumstances that go both ways on the issue of the wrecking crews' right to accompany the outfit to headquarter point on the return trip. For instance, in addition to Second Division Award 6332 cited by the Carrier, attention is directed to Second Division Award 7664 which denied the portion of a claim for the return trip home noting:

"Insofar as the return trip to Saginaw is concerned, the Rule does not offer the same clear interpretation. It is thus incumbent upon the Organization to show that established past practice has been that the Crew so accompany the equipment; this has not been accomplished on the record."

There are really two issues involved in this case. Does the wrecking crew have the right to accompany the wrecker on the return trip and 2) if they do, is the claim justified under the circumstances? In applying the divergent views reflected in the various cases cited to us, it is concluded first that generally speaking under the instant contract the employees at Birmingham have had a right to accompany the wrecker on the return trip. Further, if they do not accompany the wrecker they are entitled to be paid until the wrecker arrives. The Organization has claimed that this is the manner in which the Agreement has always been applied at Birmingham. There is no response in the record by the Carrier on this point. Thus, in this respect, the instant case is distinguished from at least Second Division Award 7664.

The Carrier argues, beyond the issue of whether the crew had a right to accompany the outfit, that the rule of reason must apply. In this case, they suggest they made a good faith effort to return the wrecking crew with the outfit. However, due to extraordinary circumstances the rule of reason prevailed and the Carrier saw it necessary and practical to transport the wrecking crew back to their home by automobile. Hypothetically and rhetorically they ask what if the outfit was destroyed, never returning home--would the employees then be paid forever? Further, they queried what about a case when the tracks might be washed out for a week or more?

In respect to the Carrier's appeal to the rule of reason, it is noted as it was above that at least one case, Award 6323, took this approach. However, the facts there are much different from here. Nor are the facts here similar, in terms of degree, to the Carrier's hypothetical examples. On the other hand, it is the judgment of the Board that the instant facts are close in nature for the purposes of realistic application of the relevant rules to the cases cited by the Organization. These cases appear to be the prevailing view among neutrals who have been faced with such difficult questions. Therefore the claim will be sustained.

A W A R D

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 2nd day of November, 1983