

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9750
Docket No. 9409
2-L&N-CM-'84

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

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

Dispute: Claim of Employees:

1. That the Carrier violated the terms of the Agreement when the Louisville, Kentucky Wrecking Crew Members I. L. Schanie, H. R. Byrley, R. J. Jacobi and D. K. Garner were relieved of their wrecking assignment by being "taxi cabed" from the wrecking outfit at Gath, Kentucky to Louisville, and the remainder of the Wrecking Crew, Carmen V. Stanley and J. H. Woehler accompanied the Wrecking outfit, to Louisville arriving and was relieved at 8:30 PM, Friday, December 21, 1979, and
2. Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Wrecking Crew Members Carmen I. L. Schanie, H. R. Byrley, R. J. Jacobi and D. K. Garner the same as they would have been compensated had they accompanied the Wrecking Outfit from Gath, Bagdad, Kentucky to Louisville, Kentucky, at the time and one-half rate of pay as follows: Carmen I. L. Schanie, H. R. Byrley and R. J. Jacobi five (5) hours and thirty (30) minutes each and, six (6) hours and thirty (30) minutes at the time and one-half rate of pay in favor Carman D. K. Garner.

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 employes 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.

On December 17, 1979 a derailment occurred at Gath, Kentucky; it was cleared from the mainline so as to permit resumption of service. On December 21, 1979 the Carrier's Louisville-based wrecking outfit and a six-man crew were called into service in order to clear the wreckage; such crew and the wrecking outfit departed Louisville about 2:30 a.m. for the site. By noon on that date the wreck was cleared and the crew prepared to depart. The Carrier directed four such employees -- Carmen Schanie, Byrley, Jacobi and Garner -- to take a taxi to their home station at Louisville; they arrived at 2:00 p.m. on that date. The other two crew members -- Stanley and Woehler -- accompanied the wrecking outfit back to Louisville arriving at 8:30 p.m. A claim was filed by the four "taxi-cabed" crew members to attain pay for the time between their arrival in Louisville and that of the remainder of the wrecking crew. (It was pointed out that three such employees -- Schanie, Byrley and Jacobi -- arrived at their home station during their regular tour, assumed their assigned duties and, for some reason, were retained in wrecking crew service until 3:00 p.m. on that date; therefore, the Claim as initiated was reduced for such employees to five and one-half hours. (Claimant Garner was on his regular day off and his claim stands at six and one-half hours.)

A claim was filed for compensation for the time between arrival at Louisville by the four aforecited members of the wrecking crew and the arrival of the wrecking outfit and the other two members (except as set out above). The Organization contends that Rule 108 applies, and calls for members of the regular crew to accompany the wrecking outfit for wrecks or derailments outside of yard limits -- as was the case here. The Organization argues that the word "accompany" must be given its literal application, i.e., whether the wrecking outfit is going to or coming from a derailment. The Carrier contends proper application limits such language to the progress of a wrecking outfit/crew to the site. Awards by prior Boards have gone both ways on this matter with some Boards concluding that such provision had the unspoken intent of applying "when crews are called" or "accompany" to the derailment site; we find no basis to impute such intent. The Carrier develops the history of prior provisions over fifty or more years to suggest the intent of the provision. Such parol evidence is useful where a provision is vague, ambiguous or given to varying interpretations. We find no such ambiguity and, as in Award 9749 before this Board involving the same parties (and with the same limitations as applied in Award 9749 insofar as regularly assigned members of the wrecking crew are concerned), we conclude that Rule 108 was violated and requires compensation for regular crew members for the time they were not permitted to accompany the wrecking outfit to its home base.

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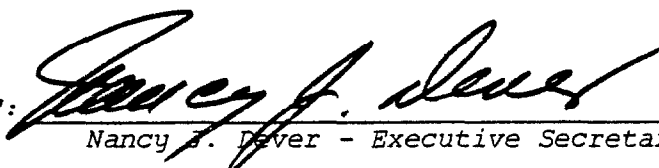
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Claims are affirmed as set out in the Opinion and in keeping with the guidelines and limitations set out in Award 9749, brought before this Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 4th day of January 1984.