CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10105
Docket No. 9899
2-BN-CM-'84

The Second Division consisted of the regular members and in addition Referee Tedford E. Schoonover when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada
( Burlington Northern Railroad Company

Dispute: Claim of Employes:

1) That the Burlington Northern Railroad Company violated Rule 7(c) of the current Agreement when they declined to compensate Carman Luedders, McCook, Nebraska, the punitive rate of pay on January 22 and 23, 1981 for wrecking service performed away from home station.

2) That accordingly the Carrier be ordered to additionally compensate Carman R. L. Luedders sixteen and one-half (16 1/2) hours, which presents the difference in the straight time rate paid the Claimant and the time and one-half rate that is due under the applicable agreement.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and 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 waived right of appearance at hearing thereon.

Rule 7 (c) of the Agreement cited by the Organization in support of the claim provides:

"(c) Wrecking service employees will be paid at the rate of time and one-half for all time working, waiting or traveling from the time called to leave home station until their return thereto, except when relieved for rest periods. Rest periods shall be for not less than five (5) hours nor more than eight (8) hours, and shall not be given before going to work nor after all work is completed."

On October 1, 1980, a derailment at Loomis, Nebraska was cleared by an outside wrecking firm. The damaged cars were loaded on their own trucks and "hospital-trained" by rail to Holdredge, some 7.9 miles away to await the availability of flat cars. On January 22, 1981, more than 3 1/2 months after the derailment had been cleared, Claimant Luedders was called from his home point, McCook, to go to Holdredge, a distance of 75 miles, and tie down the damaged cars and wheels which had been loaded onto flat cars.

The claim is based on the contention that the work done by Claimant was wrecking service as covered by Rule 7 (c). In support of this position the Organization cites Second Division Award 7157. The circumstances in that case were materially different than here involved. The claim in that case contended against the use of an outside contractor for tying down damaged cars on flat cars. In sustaining the claim the Board held "that loading and securing the wrecked cars for transportation purposes under circumstances which here prevail is a continuation of the wrecking process." There, the claim was against using an outside firm to clear up the wreck and loading wrecked cars. Here, the claim is for using a carman to tie down cars more than 3 1/2 months after the wreck was cleared and the damaged cars moved to another point. Thus, we cannot agree that Award 7157 supports the instant claim.

The circumstances in this case do not support the claim that the service of Claimant was related to wrecking service as covered by Rule 7 (c). The derailment had long since been cleared and the damaged cars moved to another point nearly 8 miles from the point where the derailment occurred. All that can be reasonably claimed is that Claimant was called from his home point to perform service at a distant point. Premium pay as provided in Rule 7 (c) is limited to wrecking service employes and thus must be considered together with Rule 86 (b) which refers to "wrecking crews called for wrecks or derailments". Claimant was not used as part of a wrecking crew nor was he assigned to work on a wreck or a derailment. He was called to go to a distant point and tie down damaged cars which had been loaded on flat cars so they could be safely moved by train.

The Organization also cited Award No. 4571 in support of this claim. There again, the circumstances were totally unlike the instant case. In that case the claim was against using maintenance of way employes in clearing up a wreck; work claimed as belonging exclusively to carmen. All of the work in that case was at the wreck scene and related to the clean-up, loading and salvage of car parts involved in the wreck. The fact that some of the work in that case was performed some two weeks after the main wreck clean-up was completed is irrelevant to the circumstances in the instant case.

The basis for premium pay in Rule 7 (c) is that wreck service is necessarily of an emergency nature and usually requires employes to be called for duty at irregular hours and work for long periods under unusual circumstances, often where the Carrier operation is at a standstill until the wreck is cleared. None of these conditions was present in the instant case. Claimant was called for his regular hours of service and there was nothing of an emergency nature in his assignment. He was simply called to go to a distant point to tie down some damaged car parts that had already been loaded on a flat car so they could be safely moved by rail to another point.

The rules are clear in providing that in order to receive wrecking pay at premium rates an employe must be called for work on wrecks or derailments. Neither was involved in the instant case and thus there is no support for the claim for premium rates.

Another case, Award No. 9423, on the same Carrier, involving a claim under the wrecking service rule was denied with comment relevant to the instant case as follows:

> "This claim arises over work performed by Claimants in conjunction with repairs to a broken train line, such work coming on a car several days after a rerailment of a wreck had occurred, including the car in question. The Organization attempts to apply Rule 7 - Emergency Roadwork (c) which governs the rate of pay for wrecking service employes while performing work attendant to derailment/rerailment activities.
>
> We find no basis to conclude the work of the Claimants in this case was covered by such Rule; essentially we adopt the Carrier's rationale that the Claimants were engaged in normal duties of the craft. The fact that the broken line may have resulted from the derailment does not make it work of a wrecking crew per se. The record is clear enough that, in this case, this specific item of work was not compensable under this Rule."

A case on the Chicago & North Western--Award No. 8186 distinguishes between the kind of emergency work involved in wrecking service and other work for which employes may be assigned for duty away from their regular station:

> "While assignments away from regular reporting stations may involve work that is emergency in nature, it is not reasonable to conclude that every assignment away from the regular reporting station amounts to a real emergency."

To receive wreck pay an employe must be involved in wrecking service and no evidence has been presented on behalf of Claimant that he was used in such service. The burden of proof required in support of the claim is not present and the claim must therefore be declined.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.