

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

( Brotherhood Railway Carmen of the United States  
( and Canada, AFL-CIO  
Parties to dispute: (   
( The Denver and Rio Grande Western Railroad  
( Company

Dispute: Claim of Employees:

1. That the Denver and Rio Grande Western Railroad Company violated the terms of the Controlling Agreement when all members of the wrecking crew were not tied up at the same time when returning from a derailment.
2. That Rule 41(c) and letter from the late Chief Mechanical Officer, Mr. P. D. Starr were violated on October 29, 1981 when the full wrecking crew was not paid as per the wrecking agreement.
3. That accordingly, the Carrier be ordered to make the members of the Grand Junction, Colorado wrecking crew, consisting of L. Wilkinson, R. Foreman and M. Manning, whole, by compensating them for three (3) hours at the rate of time and one-half due to this violation of the agreement.

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 waived right of appearance at hearing thereon.

On October 29, 1981, at 10:40 A.M., the Carrier's MC-4 crane located at Grand Junction, Colorado, was sent to Montrose, Colorado, to reraill a freight car. The MC-4 had a crew of an operator and his assistant plus four ground crew members. Four rode in the MC-4 crane to Montrose, and two ground crew men rode in a pick-up truck with Foreman Maynard. Upon completion of the reraillment, the crew ate lunch and returned to Grand Junction. Foreman Maynard instructed Carmen Wilkinson, Foreman,

and Manning to take the pick-up truck and go ahead back to Grand Junction. The three Carmen punched out at 4:00 P.M. The MC-4 arrived at Grand Junction at 7:00 P.M. This dispute is a time claim for the three Carmen who returned three hours ahead of the MC-4 on the basis the Carrier violated Rule 41 (c) when it failed to pay these Claimants in accordance with the wrecking agreement.

The Carrier raises a procedural issue that the Organization's appeal from the Carrier's denial was untimely. Overlooked by the Carrier is the fact that Master Mechanic Armbrust's denial was dated April 5, 1982, and was mailed from Salt Lake City, Utah, to Grand Junction, Colorado. Rule 31-1 (b) provides that the appeal must be within sixty (60) days from receipt of notice of disallowance. This board has no evidence before it concerning date of receipt. Secondly, we are of the view that the postmark of June 4, 1982, is within the Carrier's asserted sixty day period, and we, therefore, will consider the appeal timely progressed.

With respect to the merits, this Board dealt with an identical issue involving the same parties in Award 10080 with the same Referee as in the instant case. In that Award, the Board found the Carrier, by its own actions, committed itself to apply Rule 41 (c) when the crews of mobile cranes were called and that these cranes were considered and treated as if they were wrecking cranes. Our consideration of the submissions in this case reaffirm the reasonings set forth in Award 10080, supra.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of September 1985.