

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 7 (c) of the controlling Agreement when they released the wrecking crew at Palestine, Texas at 4:00 P.M., March 8, 1983 after calling them at 3:00 P.M. same date, then calling them back at 6:00 P.M., same date.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen C. B. Endsley, D. R. Bambeck, K. L. Kelly and E. F. Kirby in the amount of two (2) hours at the overtime rate account this violation.

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 employees 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.

The Claimants are all employed by the Carrier at its Palestine, Texas shop and yard. All Claimants are regularly assigned to Carrier's wrecking crew at Palestine.

On March 8, 1983, there was a derailment at Palestine, Texas. Claimants were called to work at 3 P.M. on March 8th and worked at the derailment until they were relieved at 4 P.M. on the same day. The Claimants were called back into service at 6 P.M. on March 8th to work on the same derailment. The Organization filed a Claim on the Claimants' behalf, seeking two (2) hours' pay at the overtime rate for each Claimant.

The Organization contends that the Carrier violated Rule 7(e) of the Current Agreement, which provides:

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

The Organization further contends that the Carrier violated Rule 7(b) when it called the Claimants back into service before five (5) hours had elapsed after they were released. Rule 7(b) provides:

"If during the time on road a man is relieved from duty for five (5) hours or more, such relief time will not be paid for provided that in no case shall he be paid for less than the eight (8) hours constituting his regular assignment at the home station (when such irregular service prevents the employe from making his regular daily hours at home station) and in addition thereto for the actual time working or traveling before or after his regular assigned hours at the home station."

The Organization therefore contends that the Claim should be sustained.

The Carrier contends that the Rule cited by the Organization does not support the Claim; Rule 7 is entitled "Emergency Road Service," and governs the assignment and payment of crews called to go out on the line of road away from their home station. The Carrier points out that it is undisputed that the derailment occurred inside the yard at Palestine, Texas; the derailment did not occur outside the yard limits or out on the line of road. The first sentence of Rule 7 states, "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" The Carrier argues that this language establishes that Rule 7 does not apply to the instant dispute.

The Carrier argues that Rule 105 of the Agreement supports its contention that wrecks occurring within a yard are handled differently from wrecks occurring on the line of road. Rule 105 provides for different crew assignments for the two classifications of wrecks.

Additionally, the Carrier argues that Rule 7(b) expressly provides for a method of payment for time spent on the road. In this case, the Claimants were not on the road; the Carrier therefore asserts that Rule 7(b) does not govern payment for waiting time. The Carrier finally contends that the Claim is without support and should be denied in its entirety.

Finally, the Carrier contends that the Claimants were not called for wrecker service until 6 P.M. The Carrier contends that a "call" refers to a call to leave the home point to go out on the road, or a call outside working hours to report to a scene of a derailment. The Carrier argues that at 3 P.M., the Claimants were still working their regular schedule and did not get called out of their home point to clean up a wreck; but they were merely taken to the area of the wreck to "survey" it and then were sent home, as usual, at 4 P.M.

This Board has reviewed the evidence in this case, and it finds that the Claim must be denied.

Although the Organization contends that the wrecking crew was called at 3 P.M., the fact remains that the Claimants were working their regular 7 A.M. to 4 P.M. assignment on March 8, 1983, and merely were sent to the scene of the derailment at 3 P.M. to survey the damage. There was no wrecking equipment available at that time, and no work was performed in an effort to rerail the cars. The Claimants were merely brought to the scene of the wreckage as part of their regular assignment that day, not in their capacity as a wrecking crew on a call. The Claimants were released to go home at their usual 4 P.M. quitting time. The Carrier then proceeded to construct a segment of track in order to be able to get the wrecker in a position to reach the derailed cars. Then the Carrier was planning to call the wrecking crew.

This Board finds that at 6 P.M., the Claimants were first called in their role as members of the wrecking crew for the purpose of cleaning up the wreck. At that point, the wrecker could reach the damage, and the work could begin. During the period between 4 P.M. and 6 P.M., the Claimants were on their own time.

Hence, we find no basis in the record for awarding the Claimants pay for the period 4 P.M. to 6 P.M. The Claimants were not called for wrecking service until 6 P.M.

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 28th day of May 1986.