

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

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railway Company violated the terms of our current Agreement, particularly Rules 7(c) and Rule 86 when arbitrarily disallowed the proper time and one-half (1.5) rate for performing rerailling service at Chelsea, Montana.

2. That accordingly, the Burlington Northern Railroad Company be ordered to compensate the following Williston Carmen A. W. Bachmeier, L. L. Berry and P. A. Kleven in the amount of the difference between straight time and time and one-half (1.5) rate for the following days; April 20, 21, 26, 27 and 28, 1983 or a total of nineteen (19) hours each at the straight time rate.

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.

Claimants are regularly assigned to the Williston, North Dakota road truck. As a result of a derailment on April 13, 1983, the Claimants were called to augment the Laurel Emergency Wrecking Crew at Chelsea, Montana. After completing the actual re-railing of cars and clearing the main line, the Laurel crew was released on April 14, 1983. The Williston crew including the Claimants continued to work at the derailment making repairs to the train line, trucks and safety appliances and salvaging parts. In conjunction with this work, the Claimants worked eight hours each on April 20, 21, 26, and 27, 1983, and six hours on April 28, 1983, for a total of 38 hours for which they were paid at the straight time rate. Claimants assert they were entitled to be compensated at time and one-half for those 38 hours and therefore claim one-half time or 19 hours pay for work performed on those dates.

Rule 7(c) of the applicable Agreement concerning "Emergency Road Work" 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."

Rule 86 of the applicable Agreement concerning "Wrecking Crews" provides:

"(a) Wrecking crews, including derrick operators and firemen, will be composed of carmen who will be regularly assigned by bulletin and will be paid as per Rules 6 and 7.

(b) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will either accompany the outfit or will be transported by other means to and from the location of the wreck or derailment. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work.

(c) In the event other than company-owned equipment is used for wrecks or derailments outside yard limits, sufficient carmen from the nearest location will be called to perform ground service (not operating) with the other than company-owned equipment. The number of carmen called will be sufficient when it equals or exceeds the number of groundmen used by the outside firm.

(d) Nothing contained in the Carmen's classification of work rule will prohibit train crews or operating department yardmen from performing rerailling work when it is done with the use of equipment carried on engine or caboose.

(e) Meals and lodging will be provided by the Company while crew are on duty in wrecking service.

(f) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classifications.

(g) Except as provided in paragraph (c) of this rule, where Carrier acquires bulldozers of like off-track equipment, by lease or purchase, carmen will operate and man such equipment when it is used in wrecking service".

The Organization argues that the Claimants were performing wrecking service on the disputed dates since the work performed was a result of the derailment and therefore the Claimants are entitled to time and one-half pay for wrecking service. The Carrier argues that the Claimants were not engaged in wrecking service on the claimed dates but instead were engaged in repair service which is not compensable at time and one-half.

Upon an examination of the entire record, we find that the Organization has not carried its burden of proof sufficient to demonstrate that the Claimants were engaging in wrecking service on the disputed dates. While it is true as the Organization claims that "the mere fact that the disputed work was performed some two weeks after the initial wrecking service does not of itself take it out of the classification of wrecking service", Second Division Award No. 4571, the burden still lies on the Organization to demonstrate that the work performed on the disputed dates was wrecking work.

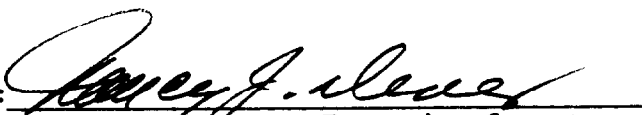
Here, the record demonstrates that the re-railing of cars and the clearing of the main line was completed on April 14, 1983, when the Laurel Emergency Wrecking Crew was released. According to the evidence in the record, the work performed by the Claimants on the disputed dates was repair to train line, trucks and safety appliances and salvaging parts. The fact that this work existed as a result of a derailment "does not make it wrecking work per se. Second Division Award No. 9423. However, "[i]f it was the work of picking up scrap and debris in the maintenance of the right of way following the wreck, then [it is repair work]". Id. The basis for premium pay under these provisions 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". Second Division Award No. 10105. Rather, the work performed here appears to have been normal road work. Second Division Award No. 10089. Therefore, time and one-half pay for the disputed dates was not warranted.

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 25th day of June 1986.