Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11572
SECOND DIVISION Docket No. 11432
88-2-87-2-75

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States and Canada
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That the Southern Pacific Transportation Company violated the terms of Rule 15 of the current working agreement when the Carrier failed to properly compensate Carmen H. Aguiar, R. Valdenegro, J. Quinn and R. LaVoie for services rendered from April 28, 1986 to May 3, 1986.

2. That accordingly, the Southern Pacific Transportation Company be ordered to compensate Carman H. Aguiar eight (8) hours at time and one-half his pro rata rate for April 28, 29, 30, May 1 and 2, 1986; Carman R. Valdenegro eight (8) hours at time and one-half his pro rata rate for April 28, 29, 30, May 1 and 2, 1986; Carman J. Quinn eight (8) hours at time and one-half his pro rata rate for April 28, 29, 30 and May 3 1986; Carman R. LaVoie eight (8) hours at time and one-half his pro rata rate for April 28, 29, 30, May 1 and 2, 1986.

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.

In the instant case, Claimants were sent from their home station at Tucson, Arizona, to perform work on April 28, 1986. On that date and on the following day of April 29, Claimants stood by while an outside contractor loaded the cars which had derailed on April 15, 1986, and moved them to the Gila train yard. Claimants were used at Gila on April 30, May 1, 2 and 3, 1986, to secure those cars before being returned to their home station of Tucson. These aforesaid facts are not disputed.

The instant dispute centers over the appropriate compensation for the work performed. The Organization has filed Claim that Carrier has violated Rule 15 which states in pertinent part:

> Rule 15. RELIEF OUTFIT SERVICE
>
> "Relief outfit service outside of yard limit boards at home point, will be paid for at the rate of time and one-half for all time whether working, waiting or traveling, from time called until return to home point and released by foreman;..."

It is the position of the Organization that the crew was called for relief outfit service to work with the derailed cars. Payment for all work done on those days at the time and one half rate is appropriate as all work performed was wrecking service and a continuation thereof.

The Carrier points out on property that Claimants assumed duty on their regular assignments at Tucson on April 28, 1986, before being moved to Gila to be available if needed. As they performed no work under Rule 15 as relief outfit or wrecking service, no violation of the Agreement took place. Claimants were paid at their straight time rate of pay for their regularly assigned hours for work performed at the derailment site and Gila. It is the Carrier's position that the Claimants were not performing wrecking service.

This Board disagrees with the Carrier's position. The evidence at bar indicates that the Claimants were members of the relief outfit crew sent from their home point to the site. They were ordered to the site of a previous derailment and stood by to lend assistance to the contractor on both April 28 and 29 as derailed cars were loaded. On both dates the Board finds for the Organization "that loading and securing the wrecked cars for transportation purposes" under these circumstances was wrecking service (See Second Division Award 7157).

As for the remaining days, the cars were moved thereafter from the derailment site on April 29 to the Gila train yard. There is no evidence in the record presented by the Organization to indicate that the work done at Gila was anything other than normal road work away from home point. While this Board would normally require such proof, the Board cannot under these circumstances where the language of the Agreement mandates that relief outfit service is paid "until return to home point." Claimants were called for wrecking service on both April 28 and 29, 1986. They stood by while an outside contractor removed derailed cars. Having established clear evidence of record that Claimants were involved in said work, the continuation on April 30, May 1, 2, and 3, 1986, of securing those cars for movement is a continuation of wrecking service until they returned to their "home point."

We have reviewed the Awards presented by the Carrier in support of its position (Second Division Awards 10089, 10105, 10887, 10258, 9423). They

do not apply to the circumstances of this case. Award 10105 involved an employee going to a distant point to tie down cars which had been involved in a derailment months earlier. In that case, as in this, the cars had been moved from the derailment site to a different location. In that case the Board ruled it was normal road work away from home station. Here, the facts are different.

Claimants were called to perform what was wrecking service in the loading and securing of wrecked cars. Carrier stated it paid Claimants time and one half pay on April 28, 1986, when in fact the record indicates it paid them time and one half pay only for work done on April 29, 1986. Carrier then recovered the overpayment when it concluded the work was all normal road work. It further stated on property that:

> "Claimants were relieved at Gila at 4:30 PM, April 29, and were thereafter used to secure the aforementioned cars on April 30, May 1, 2, and 3, 1986. They arrived back at Tucson at 7:50 PM, May 3, 1986."

The facts are that this case differs in that once Claimants were involved in wrecking service, their work securing cars at Gila was a continuation thereof until 7:50 PM, May 3, 1986, when they were returned to home point. This Board cannot change the language of the Rule by its Award. There was a continuation of the wrecking process in the instant circumstances that continued until the Claimants returned to their home point.

The work at issue involved the derailed cars and took place outside of yard limits of the Claimants home point as per Rule 15. Where the Claimants were called to the site of a derailment to lend any necessary assistance, it was work on derailments encompassed by Rule 15. After the cars were moved the Claimants were not returned to home point and released by their foreman, but continued to perform work on the derailed cars. This Board must conclude, based on the fact that Claimants did perform wrecking service on May 28 and 29, that the work of securing the cars on April 30, May 1, 2, and 3, 1986 at the Gila train yard was within the Rule. We must sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.