Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13721
Docket No. 13621
03-2-01-2-23

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division
(Transportation Communications International Union
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

(1) The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 30.2 when they failed to maintain the proper number of groundmen with the on-track wrecker when in wrecking service at Shawmut, ME on December 30, 1999.

(2) That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman William E. Fulton in the amount of 6.25 hours at overtime rate. This is the amount he would have earned had the carrier complied with the terms of our 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The facts reveal that a derailment occurred near Shawmut, Maine, in late December 1999, involving several tank cars of fuel oil which had rolled down an embankment and were submerged under water. The Carrier sent out three wreck crews to the derailment. The Claimant was part of the East Deerfield wreck crew which was properly composed of one operator of the on-track wrecker and four groundmen. They worked for a number of days lifting the tank cars from the pond, with the Carrier rotating groundmen to take a rest after each car was rolled upright. On December 30, 1999 the Carrier began the operation of heating and pumping out the fuel oil from inside the tank cars, which was anticipated to take 10 to 12 hours. At that time, the Carrier kept two operators and two groundmen on site to maintain consistent tension in the wrecker's cables during the pumping operation, and sent the other groundmen who were on double time to rest, including the Claimant.

The instant claim was filed on behalf of the Claimant only and relies upon the following language of Rule 30, Wreck Crew, in protesting the Carrier's sending the Claimant to rest on December 30, 1999, thereby depriving him of his right to earn double time pay.

> "Rule 30.2 The regularly assigned wreck crew will be comprised of 1 operator, 1 cook, if necessary, and 4 groundmen for company owned, on-track wreckers. . . . "

The Organization contends that the Carrier continued to use the on-track wrecking cranes during this operation. Therefore, the full complement of groundmen were required to remain with the crane. The Organization further asserts that the Carrier's sole motivation was to avoid the payment of double time, by selecting groundmen earning double time to go for a rest rather than rotating employees to equalize the hours worked. The Organization takes issue with the Carrier's assertion that it was concerned with the safety of employees who had been working long hours in cold conditions, by pointing out that the Carrier chose not to rest the entire crew but permitted the operators to work 102 hours at double time. The Organization notes that an emergency situation did occur on site where the ground gave out and a tank car shifted thereby justifying the reason for the agreed crew consist Rule. It argues that the penalty rate is appropriate in this case where the Carrier called the Claimant away from his home terminal to perform wrecking service and then prevented him from doing so by improperly taking him out of service.

The Carrier initially argues that Rule 30.2 only relates to the complement of a regular wreck crew, noting that the Claimant was part of the properly constituted East Deerfield wreck crew sent to work on the derailment. It asserts that such Rule does not require the Carrier to keep all crew members working at the same time together throughout the entire period of rerailment. The Carrier further asserts that the Organization failed to meet its burden of proving that crew members always sign in together, take breaks together, rest together, and leave together. The Carrier points to Rule 31, which is the pay provision for wreck crews, and relies upon the following language to support its argument that it has the right to put employees in a wreck crew to rest without pay:

> "Rule 31.2(a)When, under special circumstances, employees are required to remain away from their assigned headquarters overnight, they will be paid continuous time from the time of leaving headquarters to the time they are released at the lodging facility, which will be provided by the Carrier, subject to the provisions of Rules 4 and 28 of this Agreement."

The Carrier contends that these were special circumstances, considering the severity of the derailment, the length of time it took for rerailing operations, the weather involved, and the safety of employees working continuously for many. It notes that the wreck crew was not disbanded. Employees who were not needed were given the opportunity to rest when practicable.

The Carrier also argues that there was no wrecking service being performed during the December 30, 1999 period when the Claimant was sent to rest. The Carrier contends that the cars were already stabilized and only an unloading operation was occurring at the time that the Claimant was sent to rest. The Carrier argues that it was not required to maintain a full wrecking crew on site, relying upon Second Division Awards 11353 and 6323. The Carrier also asserts that the Organization apparently recognizes the Carrier's right to put an employee to rest without pay as it did not dispute the Carrier's placing the rest of the groundmen on the wreck crew to rest, only the Claimant. It also argues alternatively that the pro rata rate, not the overtime rate, is the appropriate rate on this property for lost work opportunities, citing Second Division Awards 4832 and 4910.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proving a violation of the Agreement in this case. There is no doubt that the Carrier complied with Rule 30.2 by properly constituting the wreck

crews sent to the Shawmut derailment in December 1999. The Organization does not assert otherwise. The language of Rule 30.2 does not require the Carrier to keep all wreck crew members working simultaneous hours, with the same breaks and rest periods, as the Organization contends. The fact that many members of the wreck crew were on double time, thereby having worked in excess of 16 continuous hours, attests to the extensive nature of this derailment and the fact that the Carrier may well have had a legitimate concern for safety as well as monetary considerations. The language of Rule 31 speaks to "employees" going on and off duty while away from their headquarters, and does not require the Carrier to place wreck crews on and off duty at the same time. In the absence of proof by the Organization that such was the consistent practice, or that the Agreement requires the Carrier to equalize overtime in rotating employees for rest, the Board can find no violation of the Agreement under the special circumstances existing at this derailment when the Carrier placed the Claimant (and other groundmen) on rest at a time that it determined that all groundmen were not needed to perform wrecking service on the site. That being said, we need not address the issue of whether the operators' maintenance of tension on the crane's cables during the heating and pumping off of the oil in the damaged tank cars constituted "wrecking service" under the Agreement.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 10th day of June 2003.