

Award 15254

Docket 24656

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

Conductors-Trainmen Supplemental Board, with Referee Mart J. O'Malley

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Conductor O. T. Tolbert, Brakemen C. E. King and G. L. Hutchinson for continuous time from Victoria to Altavista and back to Seneca, under the 14 hour clause."

JOINT STATEMENT OF FACTS: On February 8, 1948, claimants Conductor O. T. Tolbert and Brakemen C. E. King and G. L. Hutchinson were members of a pool freight crew assigned between Victoria, Virginia, and Roanoke, Virginia, the home terminal being Victoria. They reported at Victoria at 10:00 P. M. this date to handle a train from Victoria to Roanoke. After they had left Victoria Extra 904 East, a train enroute from Roanoke to Victoria, was derailed at Mile Post 214, between these two points, and obstructed the main line, the derailment occurring at 1:40 A. M., February 9th. Conductor Tolbert and crew had proceeded westwardly from Victoria to Altavista, arriving at the latter point at 12:48 A. M., February 9th. Altavista is 15 miles east of the point where Extra 904 East derailed. Conductor Tolbert and crew held a meet order with Extra 904 East at Altavista. After the derailment it was determined that Conductor Tolbert and crew could not pass the point of derailment and, as there are no facilities for coal and water at Altavista, they were instructed to leave their train, except engine and caboose, at Altavista and return with engine and caboose to Seneca, a coal and water station 16 miles east of Altavista, where their engine could be supplied. They left Altavista at 3:35 A. M., February 9th and arrived at Seneca at 4:25 A. M. By 8:00 A. M. it was apparent the derailment would not be cleared in time for Conductor Tolbert and crew to complete their trip to Roanoke within the provisions of the Hours of Service Act and they were relieved at Seneca at that time. This crew went back on duty at 4:01 P. M. at Seneca after eight hours rest. The derailment was still not cleared up and the crew was then returned Seneca to Victoria, being relieved the latter point at 7:25 P. M., February 9th.

Conductor Tolbert and crew were paid one day plus two hours overtime for their service Victoria to Altavista to Seneca and one day Seneca to Victoria. They claim four additional hours overtime on the trip Victoria to Altavista to Seneca. There are no eating or sleeping accommodations at Seneca.

The track was cleared of the wreck at 8:05 A. M., February 12, 1948.

POSITION OF EMPLOYEES: The following schedule rules, applying alike to Conductors and Trainmen, are applicable in the instant claim:

"ARTICLE 23

(b) Employes in train service will not be tied up unless it is apparent the trip cannot be completed within the lawful time, and not then until after the expiration of 14 hours on duty, under the Federal law, or within two hours of the time provided by State Laws, if state laws govern.

If employes in train service are tied up in a less number of hours provided for in the preceding paragraph their time will be computed up to expiration of 14 hours, after reporting for duty, and they will again be considered as on duty and under pay beginning at the expiration of their rest period computed from the time they were actually relieved.

When employes in train service are tied up between terminals under the law, they shall again be considered on duty and under pay immediately upon the expiration of the minimum legal period off duty applicable to any member of the road crew, provided the longest period of rest required by any member of the crew, eight or ten hours, shall be the period of rest for the entire crew.

Continuous trip will cover the movement, straightaway or turnaround, from initial point to the destination train is making when required to tie up. If any change is made in the destination after the crew is released for rest, a new trip will commence when the crew resumes duty.

Employes in train service tied up under the law will be paid continuous time or mileage at their schedule rates from initial point to tie-up point. When they resume duty on a continuous trip, they will be paid miles or hours, whichever is greater, from the tie-up point to the next tie-up point or to the terminal. It is understood that this Article does not permit trainmen to be run through terminals unless such practice is permitted under the schedule.

Employes in train service tied up for rest under the law and then towed or deadheaded into terminal, with or without engine or caboose, will be paid therefor the same as if they had run the train into such terminal.

When the line is obstructed by wrecks, washouts, or emergency conditions which put the track out of use, the foregoing regulations governing the method of pay under the Hours of Service law will not apply; crews may be tied up for rest and the time deducted with the understanding that payment will be made for not less than a minimum day up to point tied up and that the crew shall be considered as again on duty and as commencing a new day upon the expiration of 8 hours from the time relieved at tie-up point or at the time of again going on duty if required to report earlier.

Employes in train service tied up in obedience to the law will not be permitted to watch or care for engines or perform other duties during the time tied up."

The Management will, no doubt, argue that they had the right to tie up claimants Conductor O. T. Tolbert and Brakemen C. E. King and G. L. Hutchinson on February 9th at Seneca, Virginia, account of derailment occurring at mile post 214, which is between Victoria and Roanoke, and allow them pay under Article 23 of the schedule agreement. As shown in the joint statement of facts, the Committee contends that the track was not out of use between Altavista and Victoria, the home terminal of the claimants in this case. And they should have been run to their home terminal where they could have secured a place to sleep and eat.

The Committee further desires to point out the following facts as shown in the joint statement of facts. The carrier apparently was only concerned

about a place to care for their engine when they tied up the claimants in this case, but was not concerned as to whether or not their employes would have a place to sleep or get something to eat, and your Board will notice that this derailment happened on February 9th at 1:40 A.M. and was cleared at 8:05 A.M. February 12.

The Committee further contends that the claimants in this case are entitled to the additional 4 hours at time and one-half as claimed and the rules quoted support our claim, and request that your Honorable Board sustain the employes.

All evidence contained herein has been presented to the carrier in conference and is made a part of this dispute.

Oral hearing is not desired by the employes.

POSITION OF CARRIER: This case is based on schedule agreements governing road and yard conductors and brakemen effective August 1, 1946, which are hereby specifically made a part of the evidence in the case.

The proper payment to the crew in this case is governed by the provisions of Article 23 of the two schedule agreements, which rules are identical except that one refers to road conductors and the other to road brakemen. Claimants Conductor Tolbert and brakemen were called for a through run from Victoria to Roanoke, a distance of 123 miles. They held a meet with an opposing train at Altavista. After they arrived at Altavista this opposing train was derailed a short distance from Altavista. When it was determined that Conductor Tolbert and crew could not promptly pass the point of derailment they were instructed to take their engine and caboose back 16 miles to Seneca where coal and water were available. They waited at Seneca about 3½ hours when it was determined this crew could not complete its trip to Roanoke within the allowable sixteen hours and the crew was relieved. By the time the crew again went on duty after eight hours rest it was apparent that the derailment would not be cleared up for some time further and decision was made to return the crew to Victoria, which was done.

This crew comes under the specific provisions of the seventh paragraph of Article 23 (b) which reads:

“When the line is obstructed by wrecks, washouts, or emergency conditions which put the track out of use, the foregoing regulations governing the method of pay under the Hours of Service Law will not apply; crews may be tied up for rest and the time deducted with the understanding that payment will be made for not less than a minimum day up to point tied up and that the crew shall be considered as again on duty and as commencing a new day upon the expiration of 8 hours from the time relieved at tie-up point or at the time of again going on duty if required to report earlier.”

and the crew was paid accordingly. That is, the crew was allowed one day plus two hours' overtime from the time reporting at Victoria at 10:00 P.M., February 8, 1948, to time relieved at Seneca at 8:00 A.M., February 9, 1948, and one day from time reporting at Seneca at 4:01 P.M., February 9, 1948, to time relieved at Victoria at 7:25 P.M. same date.

The only argument presented by representatives of employes in support of this claim was that the crew could have been run back to Victoria instead of being laid up at Seneca and hence should not have been relieved until expiration of 14 hours on duty. It is true, of course, that the line to Victoria was open, but the destination of the crew was not Victoria but was Roanoke and this destination was not changed until 4:01 P.M., February 9, 1948, when the crew came on duty after its period of relief.

The carrier believes this crew was paid exactly as the schedule agreement provides and sees no merit whatever in the claim.

All data in support of Carrier's Position has been presented to representatives of employes.

Oral hearing is waived by Carrier.

CARRIER'S REBUTTAL STATEMENT: In the Position of Employes it is stated:

"They (the crew) should have been run to their home terminal where they could have secured a place to sleep and eat." and it is further stated:

"The carrier apparently was only concerned about a place to care for their engine when they tied up the claimants in this case, but was not concerned as to whether or not their employes would have a place to sleep or get something to eat . . ."

While these statements do not have any bearing on the claim from the standpoint of the rules involved, the carrier does not wish to be pictured as indifferent to the welfare of its employes as these statements would imply. It will be seen from the joint statement of facts that the claimants took their caboose car with them to their tie-up point, Seneca. These cabooses have ice boxes for food storage, water supply, and sleeping accommodations. Many of the men live on their cabooses at their away-from-home terminals rather than seek other available eating and sleeping accommodations. Thus the fact that there were no such accommodations available at Seneca did not constitute any hardship since the crew had its caboose on which to live.

EMPLOYES REPLY TO THE CARRIER'S REBUTTAL STATEMENT: In the Carrier's Rebuttal Statement it is stated in the third paragraph as follows:

"While these statements do not have any bearing on the claim from the standpoint of the rules involved, the carrier does not wish to be pictured as indifferent to the welfare of its employes as these statements would imply. It will be seen from the joint statement of facts that the claimants took their caboose car with them to their tie-up point, Seneca. These cabooses have ice boxes for food storage, water supply, and sleeping accommodations."

It would appear to the committee that the carrier representative would have your Board to understand that this carrier's caboose cars are something a little out of the ordinary. But this is not the case, these cabooses are just the regular run of cabooses you generally find on most all the American Railroads, and as for the sleeping accommodations on these cabooses, they have the regular built in bunks, in most cases they have cushions on them but no springs and bedding unless the employe furnishes same. Some of the regular assigned employes do equip their cabooses in order to stay on them at the away-from-home terminal. But the information that the committee has in this particular case, is that Conductor Tolbert and crew were an extra crew and in their case the caboose was not equipped to take their meals and rest on. And it is the position of the committee, if the representatives of the carrier do not wish to be pictured as indifferent to the welfare of its employes, then it should change its practices as to tying its train service employes at such places as Seneca; about all there is at this point is the carrier's coal and water station. The closest country grocery store is about two (2) miles from this point. Therefore your Board will understand that the carrier was very much concerned about the welfare of this crew when they ordered them to tie-up at Seneca, February 8, 1948.

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

The claimants were members of a pool freight crew assigned between Victoria, Virginia, and Roanoke, Virginia. Victoria was the home terminal and this crew was proceeding west to go to Roanoke.

This crew reported at 10:00 P.M. February 8, 1948 and proceeded to Altavista where it was to meet Victoria Extra 904 East. The claimants arrived at Altavista at 12:48 A.M. February 9, 1948.

Train Victoria Extra 904 East had a derailment fifteen miles west of Altavista at 1:40 A.M. February 9, 1948, and could not proceed to Altavista because of the condition of the track.

After the derailment the claimant crew was ordered to take its engine and caboose and to proceed East to Seneca where coal, water, and supplies were available for the engine. The claimants left Altavista at 3:35 A.M. February 9, 1948, and arrived at Seneca at 4:25 A.M. or fifty minutes later. At 8 A.M. of the same day, it was apparent that the wreck could not be cleared in time for the claimant crew to complete its trip to Roanoke within the provisions of the hours of service law and it was relieved from duty at that time.

This crew went back on duty at 4:01 P.M. after eight hours rest, but because the derailment was not cleared, the crew was ordered to run back to Victoria, and arriving at that point, were relieved at 7:25 P.M. February 9, 1948.

The claimants assert that they should not have been relieved at Seneca until 12:00 noon February 9, 1948 and should have been paid continuous time from Victoria to Altavista to Seneca, and should not have been released at the latter point until the full fourteen hours had passed.

The employes rely upon Article 23 Section (b) paragraph 1. The carrier relies upon paragraph 7 of the same section and article.

The meaning of Article 23(b) seems clear. To find the intent and meaning of this contract, we must consider each and every word therein. It must be construed as written when ambiguity is not shown.

In the absence of paragraph 7 of Article 23(b) the contention of the employes would prevail. However, paragraph 7 of Article 23(b) is a limitation on the application of those parts which precede it.

If the contract contained a section, paragraph, or article which spelled out the kind of place at which a tie-up could be made, or which set forth the accommodations which must exist at such place, a different question would be presented. This contract contains no provision relative to accommodations at a tie-up point.

The function here is to construe and not to add to or subtract from the agreement of the parties. Paragraph 7 of the article under consideration, limits the application of Section (b) of the article to those occasions when the line is not obstructed by wrecks, etc. The derailment made it impossible for the train to proceed to its destination.

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When the article was written it concerned itself with the forward movement of the train. If the wreck were back of the train, the train could go to its destination without hindrance.

No violation of the contract having been shown, a favorable award is not justified.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 1st day of April, 1952.