

Award No. 3768
Docket No. 3574
2-T&NO-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the controlling agreement the Carrier improperly denied Carman W. J. Troxler, assigned Wrecker Crew Member, to work with wrecker outfit and crew outside of the Avondale, Louisiana, yard limits October 7, 1958.

2. That accordingly, the Carrier be ordered to additionally compensate the above named carman W. J. Troxler assigned wrecker crew member, twelve (12) hours and ten (10) minutes on time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: W. J. Troxler, hereinafter referred to as the claimant, is employed by the Texas and New Orleans Railroad Company (Southern Pacific Lines), hereinafter referred to as the carrier, as a carman at its Avondale, Louisiana, Car Department.

The carrier maintains a wrecking outfit and regularly assigned wrecking crew at Avondale, Louisiana. Monday, October 6, 1958, the wrecker outfit and crew was called at 7:30 A.M., for a wreck in the Texas and Pacific Railroad Company yards, which was outside of the carrier's yard limits. The following regularly assigned and extra wrecking crew members were called as follows October 6, 1958:

“Carman R. R. Nesbitt, Wrecking Engineer,

Carman R. J. Martinez, Wrecker Fireman and relief engineer,

Carman P. L. Alonzo, in place of Wrecker Member S. A. Martinez who was off on vacation,

Carman J. W. Fauchaux, in place of Wrecker Crew Member L. J. Champagne who was off account of illness,

Carman W. J. Troxler, in place of Wrecker Crew Member J. A. Devalcourt who requested not to be used account of health condition, and,

wrecking crew. See Award 2554. Consequently, if the organization is relying on the first sentence of Rule 121, the claimant was not regularly assigned as a relief outfit member and in the judgment of the carrier, no replacements to the Avondale relief outfit were needed on October 7, 1958.

CONCLUSION

The carrier has pleaded alternative positions in the instant dispute. It feels that the claim should be primarily denied because of the provisions of the September 1, 1949 agreement between these parties does not apply to wrecker service performed on the T&P Railway. Therefore, claimant has no contractual right to perform the work in question. As an alternative or secondary defense the carrier contends that the work was performed within the yard limits of the New Orleans Terminal and sufficient carmen were called and used to perform the rerailling work, in accordance with the second sentence of Rule 121 of the September 1, 1949 agreement. Should the Board rule that the work in question was not performed within the yard limits of New Orleans Terminal, then in that event, and as a further alternative position, the subject employe was not entitled to the wrecking service because he was not a regularly assigned wrecking crew member and no extra men or replacements were required.

Premise considered, a denial award is appropriate under the circumstances.

FINDINGS: The Second Division of the Adjustment Board, based 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 employe 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 claim is that by not using Claimant Troxler on the second day the Carrier violated the first sentence of Rule 121, which provides:

“When wrecking crews are called for wrecks or derailments outside of the yard limits, the regularly assigned crew will accompany the outfit.”

The work was outside the Claimant's home yard limits; in fact, it was off the Carrier's property and on that of the Texas & Pacific Railway Company.

Under similar circumstances an identical rule was held inapplicable to work outside the carrier's property, in this Division's Awards 2213 and 2292, and no awards to the contrary have been cited or found.

In addition the record shows that Claimant was not a regularly assigned member of the wrecking crew, but was an extra. The fact that he was used on the preceding day in lieu of a regularly assigned crew member did not make him a regularly assigned member.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1961.