

(Advance copy. The usual printed copies will be sent later.)

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6332
Docket No. 6148
2-B&M-CM-'72

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

*Disputed
Follows*

Parties to Dispute: (System Federation No. 18, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Boston and Maine Corporation

Dispute: Claim of Employees:

- (a) That the Boston and Maine Corporation violated the provisions of the controlling agreement, namely, Rule No. 113, between the hours of 5 P.M. and 11:30 P.M. on January 8, 1971.
- (b) That accordingly, the following Carmen, members of the Boston Relief Train, be additional compensated four (4) hours and thirty (30) minutes at the Carmen's time and one-half rate of pay for the hours in question: Messrs. M. Considine, E. Hardy, G. Hardy, R. J. Forrest, H. Goscinak, W. Goscinak, J. Norton and G. Wood.

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 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 were given due notice of hearing thereon.

The facts in this case are undisputed: The Carrier dispatched a wrecking crew which included all of the claimants. When the claimants completed their assigned duties, they were transported from the scene of the derailment by automobile and arrived at their headquarters at 7:00 P.M. on January 8, 1971. The wrecking outfit, on the other hand, arrived at headquarters at 11:30 P.M. on January 8, 1971. The claimants claim four (4) hours and thirty (30) minutes pay for each of them.

To support their case, the claimants rely on Rule 113 of their agreement which provides:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits sufficient carmen will be called to perform the work." (Emphasis added)

A long line of precedents have established the principle that a wrecking crew is entitled to compensation for the time an outfit leaves its yard and travels to the site of a wreck or derailment. See Awards 857, 1702, 2185, 2404, 3365, 4280, 4675, and other decisions. This case presents the question of whether or not a wrecking crew member is entitled to compensation for the time between the departure from the wreck site and return of a wrecking outfit to its yard.

The Carrier has introduced evidence tending to show that the original purpose of this rule authorized Carriers to require a crew to accompany the wrecking outfit. The rule was first promulgated in 1919 and later interpretations support this proposition. Apparently, the rule originally was designed to protect the Carrier by assuring that it could require a sufficient number of wrecking crew members to travel to the site of a wreck or derailment so the work could be completed. In those early days of uncertain transportation the Carrier would be assured that a crew would be available at the wreck site and would not be late or absent because they used some other means of transportation. In other words the rule originally was designed to protect Carriers, and now employees are claiming that it assures them compensation for time not worked.

The principle of allowing compensation for the time a wrecking outfit departs its yard and arrives at the wreck or derailment site is well established in prior awards and should not be overturned by this Board. These prior awards rely on the phrase "will accompany the outfit" to sustain claims. This phrase, however, is prefaced with the clause "when wrecking crews are called." The term "called" means "to summons." Webster's New Collegiate Dictionary. Read in its entirety Rule 113 means that when crews are "called" or "summoned" to work they shall "accompany the outfit." Rule 113 does not state that when crews complete an assignment they shall "accompany the outfit."

The Organization cites numerous cases to support its contention but most of these awards involve fact situations with claimants who were called and did not accompany the outfit to the wreck site.

Second Division Awards 5678 and 5784, however, involved claimants who did not accompany the outfit going to and coming from a wreck or derailment site. Award 5678 (Referee Ritter) sustained the claim citing awards involving time to a wreck site without discussing the question of the application of Rule 113 to the return trip. Award 5784 (Referee McGovern) sustained a claim also without considering the applicability of Rule 113 to the return trip.

The language of Rule 113 is clear and unambiguous. When wrecking crews are called they will accompany the outfit to the wreck or derailment site or must be compensated for this time if another method of transportation is used. Rule 113 does not provide for crews to accompany an outfit on a return trip. This Board does not

have the authority to add to, alter or modify a contract provision so the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killeen

Executive Secretary

Dated at Chicago, Illinois, this 7th day of July, 1972.

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

U. S. Supreme Court Justice Hugo Black, in a landmark railroad case 1/, decided in 1950, more clearly than anyone, the reasons for the existence of the National Railroad Adjustment Board.

"The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the Nation's railway systems."

In this award neither of the two prominent guidelines or purposes have been met. The Organization's problems in this case was simply ignored. Little more than double talk was given to the desirability for any measure of uniformity in the award working process. As a result of this award, the Employes of the Carmen craft will be deprived of an undetermined amount of money.

"Rule 113. When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

1/ Slocum v. Delaware, Lackawanna & Western Railroad,
339 U.S. 239, 94 L. ed 795 (1950)

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 2

The majority stated this rule was first promulgated in 1919 and was apparently designed to protect the carrier by assuring it could require a sufficient number of wrecking crew members to travel to the site of a wreck or derailment in order that the work could be completed. However, we submit that the rule was also designed to protect the wrecking crew so they would have a means of transportation to and from the wreck site and be paid from the time the wrecking outfit left home point until said outfit returned to home point. This is in accordance with the rule governing "Overtime, Emergency Service Road Work". This is substantiated by the fact that in 1919 the principal mode of transportation was railroads. Any other forms of transportation were not as dependable or as efficient as railroads.

The interpretation of the above quoted rule was made by the United States Railroad Administration - Railway Board of Adjustment No. 2 in Docket No. 983, decision rendered November 20, 1919. The question in Docket No. 983:

"Question . . . Shall the regularly assigned wrecking crew at Greenville be paid for all hours they would have made if permitted to accompany wrecker to Letots?"

The Employes, in their position, stated in part:

"* * * It was a deliberate failure on the part of the Company to comply with paragraph E, Rule 8; and we ask pay for all hours the wrecking crew would have made if permitted to accompany the wrecker."

"Decision

"The members of the regularly assigned wrecking crew in question will be paid for all hours they would have made had they been permitted to accompany wrecker to Letots, Texas."

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 3

Docket No. 1431, United States Railroad Administration,
Railway Board of Adjustment No. 2, May 20, 1920.

"QUESTION...Should wreckers travel back
and forth on passenger trains or remain
with outfit?

"EMPLOYES' POSITION

"This is a regularly assigned wrecking
crew and as the calls are for wrecks or
derailments outside the yard limits they
should, according to rule 158 of the
National Agreement, accompany the wrecking
outfit to wrecks or derailments and remain
with the outfit until it is returned to
home station. .

"DECISION

"In accordance with the provisions of rule
158 of the National Agreement, the regularly
assigned wrecking crew will accompany the
wrecker outfit when it is sent outside of
yard limits to do wrecking work. (See letter
on this subject dated March 12, to A. H.
Smith, president of the Cleveland, Cincinnati,
Chicago & St. Louis Railroad, from Mr. Frank
McManamy, Assistant Director.)"

The above referred to letter is as follows:

"Mr. A. H. Smith, President
Cleveland, Cincinnati, Chicago
& St. Louis R. R.
Grand Central Terminal
New York, N. Y.

"Dear Sir: The National Agreement between
the Director General of Railroads and the shop
crafts became effective October 20, 1919.
Various questions have been pending as to the
interpretation and application of that agree-
ment.

• LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 4

"Among these was the question covered by letter from the Federal Manager of the Cleveland, Cincinnati, Chicago & St. Louis Railroad to Mr. W. S. Carter, Director of the Division of Labor, as to the application of Rule 157 of the National Agreement. The conclusion has been reached that the rule so far as it relates to the question raised is clear as written and, therefore, no interpretation is necessary.

"Concerning the question raised as to whether or not wrecking crews may be sent to point of wreck on passenger train and returned to home station in the same manner, instead of accompanying wreck, beg to advise Rule 158 provides, 'When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany outfit.' It was not the intent of this rule to prohibit sending wrecking crew to home station by passenger train in advance of the wrecking outfit.

"I shall be obliged, therefore, if you will arrange on behalf of the Railroad Administration, for such readjustments, if any, as may be called for in accordance with this letter for the period from October 20, 1919, to February 29, 1920, inclusive.

Yours very truly,
(Signed) FRANK McMANAMY
Manager, Department of Equipment."

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 5

Also see letter dated March 12, 1920 to J. H. Hannaford, Northern Pacific Railroad, from Frank McManamy, Assistant Director.

"Mr. J. H. Hannaford, President
Northern Pacific Railroad,
St. Paul, Minn.

"Dear Sir: The National Agreement between the Director General of Railroads and the shop crafts became effective October 20, 1919. Various questions have been pending as to the interpretation and application of that agreement.

"Among them was the question covered by letter from the General Manager of the Northern Pacific Railroad to Mr. W. S. Carter, Director of the Division of Labor, as to the application of Rule 157 of the National Agreement. The conclusion has been reached that the rule so far as it relates to the question raised is clear as written, and therefore, no interpretation is necessary.

"With reference to the question raised as to whether or not it is permissible after clearing away the wreck to send a portion or all of the wreck crew back to their home terminal on a passenger train in advance of the wrecking outfit, beg to advise this rule does not prohibit the sending of a portion or all of the wrecking crew back to home terminal on passenger train in advance of the wrecking outfit.

"The question raised as to calling employes for wrecker service is clearly covered by Rule 10.

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 6

"I shall be obliged, therefore, if you will arrange on behalf of the Railroad Administration for such readjustments, if any, as may be called for in accordance with this letter for the period from October 20, 1919, to February 29, 1920.

Yours very truly,

(Signed) FRANK McMANAMY
Manager, Dept. of Equipment."

Docket No. 1602, July 20, 1920, United States Railroad Administration, Railway Board of Adjustment No. 2.

"QUESTION:--Under rule 158 is it obligatory for the railroad to send outside of yard limits the wrecker and full wrecking crew in cases of slight derailments where a limited number of men, not necessarily the full crew of the wrecker, are required, or should the sending of the wrecker and full crew be left subject to discretion of the management as has been the past practice?

"Is it the intention to call sufficient men from the regularly assigned wrecking crew for wrecks or derailments within the terminal or yard limits, or is it the intention to use other carmen for this service?

"DECISION

"In case the wrecking outfit is used on wrecks or derailments outside the yard limits, the full regularly assigned crew will accompany same.

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 7

"For slight derailments and other work outside of the yard limits, when the wrecking outfit is not used, a sufficient number of carmen will be sent out to perform the work.

"For wrecks or derailments within the yard limits, men of the regularly assigned wrecking crew or other carmen will be used as may be deemed necessary.

RAILWAY BOARD OF ADJUSTMENT NO. 2,
R. J. TURNBULL, Chairman.

Washington, D. C., July 20, 1920."

Docket No. 2213, December 14, 1920, United States Railroad Administration, Director General of Railroads, Railway Board of Adjustment No. 2.

"QUESTION:--What number of men is considered a full wrecking crew - Rule 158 of the National Agreement?

"EMPLOYEES' POSITION:

"On a recent date two loaded cars were derailed at Montpelier, Ind. The management called out three members of the wrecking crew to put the cars back on the rails. These men were called from the wrecking crew at Muncie, Ind. They took along with them the block car and did not take the wrecking derrick.

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 8

"We contend that Rule 158 provides for the taking of the full wrecking crew along on a job of this nature when it is outside of the yard limits, which was the case in this instance, as Montpelier is out of the yard limits of Muncie. We further contend that the wrecking derrick does not necessarily have to accompany outfit on wrecks or derailments outside to warrant the taking of the full wrecking crew with them, but that the block car in cases of this nature constitutes the outfit.

"RAILROAD'S POSITION:

"It has been our practice to send enough men with the wrecking outfit to clean up the wreck. If it is a large wreck, we naturally send more men than if it is only a car derailment. We have been unable to find any interpretation or decision which specifies the number of men to be considered a full wrecking crew, and for that reason we have followed our past practice of only sending enough men to take care of the wreck.

"DECISION

"In case the wrecking outfit is used on wrecks or derailments outside the yard limits, the full regularly assigned crew will accompany same.

"For slight derailments and other work outside of the yard limits, when the wrecking outfit is not used, a sufficient number of carmen will be sent out to perform the work.

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 9

"RAILWAY BOARD OF ADJUSTMENT NO. 2
R. J. TURNBULL, Chairman.

Washington, D. C., December 14, 1920."

The majority interpreted the Dockets of the United States Railroad Administration - Railway Board of Adjustment No. 2 and the two letters quoted there to mean that the carriers were relieved of their obligation to pay the wrecking crew the same amount of time that it took the wrecking outfit to depart and arrive back at home station. A close scrutiny of these dockets and letters reveals that the question asked was concerning transportation and not pay. The question of pay had already been settled by this Board in Docket No. 983, dated November 20, 1919, quoted hereinbefore. A close examination of this docket will reveal the wrecking crew was paid for the number of hours they would have made if they had accompanied the outfit. This principle was followed in Dockets Nos. 1602 and 2213, decisions rendered July 20, 1920 and December 14, 1920 respectively.

The question of pay did not arise again until the Second Division's National Railroad Adjustment Board was established. Award Nos. 857, 1362, 2185, 3936, 4785, 4932, 4972, 5678, 5784 and others followed the principle of allowing the wrecking crew pay when not allowed to accompany the wrecking outfit.

Award Nos. 5678 and 5784 were specifically pointed out to the referee, they being the two latest awards of this Board. The majority dismissed these awards as not being relevant because the referees did not discuss the application of Rule 113 nor consider the application of said rule on the return trip. A study of the submissions of the Carriers and Employes, as well as the Findings in these Awards, will prove that such a statement made by the majority was not based upon fact. The only conclusion that can be made is that they were on a fishing expedition in an attempt to justify their erroneous decision.

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 10

The rule involved in Awards Nos. 5678 and 5784 is identical with one exception, i.e., the rule in Awards Nos. 5678 and 5784 stated:

"* * * a sufficient number of the regularly assigned crew will accompany the outfit."

(Emphasis added)

The rule was fully discussed in the findings in said awards and the decisions rendered based upon the rule and facts of record. In the instant case, Award No. 6332, Rule 113 states:

"* * * the regularly assigned crew will accompany the outfit."

(Emphasis added)

The majority tried to further sustain their erroneous decision by defining the word "called" in Rule 113, stating:

"The principle of allowing compensation for the time a wrecking outfit departs its yard and arrives at the wreck or derailment site is well established in prior awards and should not be overturned by this Board. These prior awards rely on the phrase 'will accompany the outfit' to sustain claims. This phrase, however, is prefaced with the clause 'when wrecking crews are called.' The term 'called' means 'to summons.' Webster's New Collegiate Dictionary. Read in its entirety Rule 113 means that when crews are 'called' or 'summoned' to work they shall 'accompany the outfit.' Rule 113 does not state that when crews complete an assignment they shall 'accompany the outfit.'"

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 11

In Award No. 4471 of this Division, Referee Anrod stated:

"1. The law of labor relations is well established that the rights and obligations of the parties to a labor agreement must be ascertained by reading the agreement in its entirety, rather than from isolated parts or fragments. Single sentences or sections cannot be isolated from the context in which they appear and be construed independently with disregard for the apparent intent and understanding of the parties as evidenced by the entire agreement. The meaning of each section or sentence must be determined by reading all relevant sections and sentences together and coordinating them in order to accomplish their evident aim and intent. See Awards 4130, 4190, 4192, 4335, 4337, and 4362 of the Second Division."

Therefore, Rule 113 and other rules of the Agreement pertaining to wrecking crews and how they are paid must be read in their entirety rather than words or sentences.

The Decisions in Dockets of the Railway Board of Adjustment No. 2 as quoted hereinabove, as well as the awards referred to above, were based upon analyzing the entire rule in conjunction with the facts of record, and not upon one word within the rule.

LABOR MEMBERS'

DISSENT TO AWARD NO. 6332, DOCKET NO. 6148

Page 12

We believe the referee, for some unknown reason, was grasping vainly for an excuse to deny this case irrespective of common sense, knowledge of the railroad industry and precedents established by this Board.

In prior awards, this Board had established a degree of uniformity in the interpretation of the agreement regarding wrecking crews being paid when not allowed to accompany the outfit to and from a derailment. The referee, in his decision for reasons of his own, has attempted to destroy that uniformity. Further, the referee ignored the language interpreting the rule and practice in the industry over the years in the awards cited hereinabove.

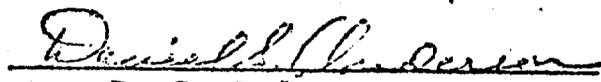
The Carrier, by their actions in this dispute, have changed the rules and working conditions of the employees involved. The majority, by the Award, permits them to do this. The Railway Labor Act does not grant either the Carrier or the Adjustment Board the authority to do this. The Act provides that the rules or working conditions will not be changed until a notice is served to change said rules or working conditions as per Section 6 of the Act reading:

"SECTION 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be

"within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

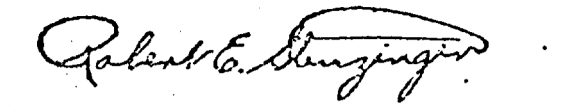
Therefore, Award No. 6332 is palpably erroneous.


W. O. Hearn


D. S. Anderson


E. J. Haesaert


E. J. McDermott


R. E. Stenzinger