

Award No. 277

Docket No. 280

2-MP-CM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 2, RAILWAY EMPLOYES'

DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Carman J. W. Griffin should have been called for wrecking service August 7, 1937, and account of being denied said call, that he be compensated at carman's rate of pay (punitive basis) for the same number of hours as paid for to the other members, namely Truckman Hixson and Carman Helper Antle, who were called.

EMPLOYES' STATEMENT OF FACTS: On August 6, two cars were derailed in gravel pit at Blue Rapids, Kansas. On the same date, on or about 9:15 P. M., Train Dispatcher Swanson notified acting Car Foreman Gooch, Atchison, of derailment; in turn, Foreman Gooch notified Wrecker Foreman Shockey, instructing him to proceed to derailment with wrecking crew and equipment; Wrecker Foreman Shockey called Truckman Hixson and Car Helper Antle for 1:55 A. M., August 7, crew departing from Atchison on train 519 at 2:20 A. M., arriving at Blue Rapids at 10:15 A. M., subsequently commencing work and with the assistance of two section crews, composed of five men to the crew, the job was completed at 1:15 P. M. Crew departed from Blue Rapids at 1:25 P. M., August 7, arriving at Atchison (home point) at 11:00 P. M., August 7.

POSITION OF EMPLOYES: In presenting this case to the Honorable Board, Second Division, the employees do so reluctantly, inasmuch as the rules at issue, and hereinafter quoted, expressly cover the instant case and should need no interpretation.

Missouri Pacific current wage agreement, effective July 1, 1936, reads:

"Rule 119. (a) Regularly assigned wrecking crews will be composed of carmen and helpers, where sufficient men are available, and will be paid for such service under Rule 7, except that the proper officer may select wrecking engineers from any class of mechanics in service giving preference to mechanics employed as carmen. Meals and lodging will be provided by the Company while crews are on duty in wrecking service."

"Rule 120. When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

A sufficient number of the regularly assigned crew did accompany that part of the outfit (block car) that was sent from Atchison to Blue Rapids to rerail the two cars.

The employes further contend that by reason of utilizing the services of maintenance of way track gangs at Blue Rapids to assist in rerailing these two cars, such action supports their contentions that members of the wrecking crew, other than the three sent, should have been sent out of Atchison.

There are no rules of our wage agreement or practices thereunder that would support the employes' contentions. The utilization of track labor gangs to clear wrecks, rerail cars, etc., is a well established practice and no rules of our agreements with the mechanical department employes prohibit their use when the occasion demands, or penalizes the carrier to the extent of paying mechanical department employes, members of wrecking crews, for work not performed by reason of work that is performed by these maintenance of way track gangs under such circumstances.

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.

The parties to said dispute were given due notice of hearing thereon.

The regular assigned wrecking crew at Atchison consists of a foreman, one car repairman, two truckmen and two carmen helpers.

On August 7, 1937, foreman, one truckman and one carman helper with "block car" were sent to a gravel pit at Blue Rapids, Kansas, 93.99 miles distance, where two cars that had been shoved over derail were rerailed with the assistance of ten additional section laborers.

Rule 120, reading as follows:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

was not complied with in the instant case.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of November, 1938.