

Award No. 424

Docket No. 433

**2-CRI&P-CM-'40
CRI&G**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO, ROCK ISLAND, AND PACIFIC
RAILWAY COMPANY**

CHICAGO, ROCK ISLAND, AND GULF RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: That carmen, Roy L. Gilmore, Ora P. Whitfield, Vernon U. Bell and Timothy S. Bullock, be compensated the same amount of wages earned by members of the Trenton, Missouri, wrecking crew while at Hickory Creek wreck, account management using section foreman and three (3) section laborers to augment the wrecking crew force and perform carmen's work in violation of Rules 31 and 95.

EMPLOYEES' STATEMENT OF FACTS: On April 7, 1939, the regular assigned wrecking crew consisting of Carmen H. R. Smartt, J. A. Bittorf and Carmen Helpers O. S. McLey and T. O. Bryant were called and sent to Hickory Creek for a derailment of ten (10) cars in train, second, number 912.

Smartt was the engineer, and Bittorf the fireman, of a 150 ton machine; and Helpers McLey and Bryant were the ground men.

Arriving at the wreck the crew force was increased by adding the section foreman and three (3) section laborers.

POSITION OF EMPLOYEES: We contend that management violated Rule 31 in using section foreman and section laborers to do carmen's work, as this rule specifically states "None but Mechanics, etc." and emphasis must be placed on **none**.

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work.

At points or where three shifts are worked and there is not sufficient work to justify employing a mechanic of each trade, the mechanic or mechanics employed at such points will, as far as capable, perform the work of any trade that may be necessary."

Further we contend Rule 95 provides that the work of wrecking belongs to carmen and helpers as it specifically states who shall compose the crew.

“Wrecking crews, including engineers and firemen, shall be composed of regularly assigned carmen, and will be paid for such service as per general rules from time called until return to their home station. Meals and lodging will be provided by the company while crews are on duty in wrecking service.”

It will be noted that, except for transposing of language, the two paragraphs are substantially identical.

A question arose during Federal Control whether laborers could be used in addition to carmen in clearing wrecks. Mr. Frank McManamy, manager, Department of Equipment, United States Railroad Administration, ruled in a letter dated March 11, 1920, addressed to Mr. C. W. Huntington, President, Virginian Railway Company, that the rule does not apply to section labor forces engaged in laborer's work in connection with clearing wrecks. Mr. McManamy was correct in his ruling and a like ruling should be made by this Board.

It is noted that the employes are claiming time for Carmen Ora P. Whitfield and Roy L. Gilmore, in addition to two other carmen, evidently for April 7, 8 and 10, 1939. We wish to call the Board's attention to the fact that Ora P. Whitfield worked and was paid as a carman at Trenton, Missouri, 8 hours each, April 8 and 10, 1939, at 78¢ per hour, or a total of \$12.48; that Roy L. Gilmore worked and was paid as a carman at Trenton, Missouri, eight hours each April 7, 8, 9 and 10, 1939, at 78¢ per hour, or a total of \$24.96. Carmen Bell and Bullock were not employed during this period as they were furloughed on account of force reduction, being junior to other carmen who were employed.

The first sentence of Rule 35—Grievances—reads as follows:

“Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee or their representatives, within ten (10) days. * * ”

The only claim that has been properly presented under this rule is that of August C. Kroeger and Timothy S. Bullock, which was submitted to the master mechanic by Local Chairman Bittorf under date of April 13, 1939. Our record indicates that proper claims were not filed in behalf of Roy L. Gilmore, Ora P. Whitfield and Vernon U. Bell. The first indication that any claim would be filed in behalf of the men last named was General Chairman Arrington's letter of April 24, 1939, fourteen days after cause for complaint ceased to exist. Therefore, even though there was merit in the claim, if properly filed, there can now be no claim before your Board in behalf of these men. General Chairman Arrington listed the names of five carmen although the declaration to the Board does not include the name of Kroeger.

When Rule 35 was adopted it was the assertion of the employes' committee that the rule would bar consideration of claims, such as these, which are not filed within the ten-day period. Therefore, the claims in behalf of Vernon U. Bell, Roy L. Gilmore and Ora P. Whitfield are not due any consideration even if there should be merit in the claims. Further, there is no merit in their claims and claims in their behalf should be denied. As there is no merit in the claim of Mr. Bullock it, likewise, should be declined.

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.

Rule 95 provides in part:

“Regularly assigned wrecking crews, including engineers and firemen, will be composed of carmen and helpers, * * *”

Due to a reduction in force, the regularly assigned wrecking crew consisted of the engineer, fireman, and two carmen helpers. This force was augmented at the wreck by other than carmen or helpers who performed work properly belonging to carmen or helpers, the extent of which this Board is unable to determine.

AWARD

Claim of employes sustained to the extent of amount of carmen's work in connection with wrecking which was performed by other than carmen.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1940.