

Award No. 816

Docket No. 772

2-N&W-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Bruce Blake when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That L. D. Dinsmore, carman, and the regular assigned carman helper (helper's name unknown) to wreck car crew at Crewe shop, Crewe, Virginia, be compensated for four hours and fifteen minutes (4'15") for time lost on November 19, 1941, account not being called to accompany wreck car to Farmville instead of laborers.

EMPLOYEES' STATEMENT OF FACTS:

- 1—The derrick car crew at Crewe shops, exclusive of the engineer, consists of one carman, the claimant, one carman helper and laborers.
- 2—On November 19, 1941, at 3 P. M., the Crewe shops derrick car proceeded to Farmville with the derrick engineer and two shop laborers, loaded transformers from the ground on to an automobile truck for the Virginia Public Service Company. The transformers weighed approximately 24000 lbs. The derrick car left Crewe shops at 3 P. M., and returned back to the shops at 7:15 P. M., same date, November 19, 1941.
- 3—This operation at Farmville required blocking the derrick, hooking chains and securely blocking the transformers on the automobile truck.
- 4—The controlling agreements, one printed and another in memorandum form, both effective July 15, 1938, provide:
 - (a) "Wrecking service employes will be paid under this rule . . ."
(See Rule 10 of printed agreement Emergency Service Road Work.)
 - (b) "Regularly assigned wreck crews, not including engineers, will be composed of one carman, one carman helper and laborers."
(See Memorandum Agreement dated July 15, 1938.)
- 5—These aforesaid controlling agreements do not contain certain standard wrecking crew requirements upon the carrier.

POSITION OF EMPLOYEES:

First: The work at Farmville of blocking down the derrick, hooking chains and securely blocking transformers on an automobile

Rule 103:

Regularly assigned wrecking crews, including engineers and firemen, will be composed of carmen, and will be paid for such service under Rule 10.

Meals and lodging will be provided by the company while crews are on duty in wrecking service.

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.

Rule 104:

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.

The rules have been interpreted to require the carrier to send the regularly assigned number of carmen out on line with wrecking crane for wrecks whether they were needed or not. Decision 2491 (United States Railroad Labor Board, June, 1924). Because the rules thus interpreted lacked flexibility and provided a make-work mandate, the carrier rejected them. Men and management agreed upon the rule covering wreck car service set forth above with the understanding that the number of employes used would be determined by the craft work to be performed in each instance.

But even had the **proposed rules** been adopted, they would not have laid the foundation for sustaining this claim, for this Division decided, in Award 424, that **under those very rules** only those employes have a claim who can show that work of their craft was performed at the wreck or derailment.

Moreover, under the language of the **proposed rule**, this claim could not have been sustained because all members of the regularly assigned crew did not accompany "an outfit." The derrick car is not the "outfit." It is merely a part of the "outfit" which consists of a commissary and sleeping car, a derrick car, a truck car and a tool car.

And, finally, under the **proposed rule**, this claim could not have been sustained because the call was not made for a wreck or derailment. Mr. McManamy's ruling on proposed Rule 104 to Federal Manager Stevens, of the C. & O., of February 17, 1920, reads as follows:

"Concerning the question raised in your submission as to whether or not regularly assigned wrecking crews shall accompany the wrecking outfit when used for work other than wrecks or derailments, will advise this rule applies to the work of wrecking and is silent as to the use of the wrecking outfit for other work."

If under the rules proposed by the employes this claim is without merit, **it must be clear** that the agreed rule—designed to avoid these possible pitfalls in Rule 103 and 104—cannot serve as a basis for claim.

The carrier asserts that under the agreement set forth above, and in harmony with many years of practice, it enjoys the right to call for wreck car service such men as are needed. Carrier requests that the claim be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

*Considering the premise that an **entire** crew should accompany a derrick car, which alone would logically lead to the conclusion that Dinsmore and a carman helper should have been called, it should not be forgotten that the claim prior to reference to the Second Division was for Carman Dinsmore and not for a carman and a carman helper; that the complaint has been that one carman should have been called "**instead of laborers.**"

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.

It is the opinion of the Division that the work, upon which the claim is predicated, was in no sense wrecking service within the contemplation of the agreement. The failure to call claimants to go out with the derrick car on the date involved was, therefore, not a violation of the agreement, notwithstanding they were regularly assigned to the wreck car crew.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of August, 1942.