

Award No. 857

Docket No. 777

2-DL&W-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: A—That the carrier on September 8, 9 and 10, 1941, violated provisions of the agreement controlling the sending of the Binghamton, N. Y., wreck train complete, except the wreck crew, to Syracuse, N. Y., to be manned by carmen at that point in rerailing D. L. & W. Car No. 95727, which was down an embankment.

B—That the following carmen who are the assigned wreck crew at Binghamton, N. Y., be compensated for the aforesaid violation in accordance with Rule 7:

Patrick Norton, derrick engineer, from 11:00 P. M., September 8, 1941 to 7:00 A. M., September 9, 1941, also one hour preparatory time. George Schuster, C. Griffiths, S. Rought and P. Franchino, ground crew, from 11:00 P. M., September 8, 1941 to 7:00 A. M., September 9, 1941, and from 3:30 P. M., September 9, 1941 to 4:00 A. M., September 10, 1941, also their lunch period from 12:00 N. to 12:30 P. M. on September 9, 1941, and one hour preparatory time.

EMPLOYEES' STATEMENT OF FACTS: Carmen Patrick Norton, George Schuster, C. Griffiths, S. Rought and P. Franchino, are regularly employed by the carrier from 7:00 A. M. to 3:30 P. M. on the Binghamton repair track, New York. These carmen are the assigned wreck crew at Binghamton, New York.

On September 8, 1941, at 11:00 P. M., the wreck train left Binghamton, New York on fast freight train going to Syracuse, New York. The assigned wreck crew was not called to accompany the outfit, although they were available if called.

The carrier assigned carmen from Syracuse, New York to operate the Binghamton, New York wreck outfit, in attempting to rerail Car D. L. & W. 95727 which was down an embankment. Patrick Norton, the assigned derrick engineer of Binghamton, New York, was sent to Syracuse, New York, from Binghamton New York, on Passenger Train No. 915, leaving Binghamton, New York at 7:40 A. M. September 9, 1941; Norton operated the derrick.

The Syracuse carmen assisted by Derrick Engineer Norton of Binghamton, New York were unable to rerail Car D. L. & W. 95727 on September

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 language of the rule of agreement involved contemplates that when the wrecking outfit is used for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. However, none of the regularly assigned crew accompanied the wrecking outfit when dispatched from Binghamton to Syracuse, on the night of September 8, 1941.

The evidence of record shows that the number of carmen located at Syracuse who worked with the Binghamton wrecking outfit equals the number of carmen constituting the Binghamton wrecking crew; therefore it must be conceded that the management considered four carmen were required for service with the wrecking outfit, in addition to the derrick engineer.

There are no limits, prescribed in the agreement, as to where and to what points or divisions the regularly assigned wrecking crew and outfit may be sent when necessary; therefore the claim of employes should be sustained.

AWARD

The regularly assigned wrecking crew shall be paid the difference between that which they earned and that which they would have earned had they accompanied the wrecking outfit.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of November, 1942.