

Award No. 1050
Docket No. 974
2-SP(Tex&La)-CM-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

DISPUTE: CLAIM OF EMPLOYEES: (a) That the carrier violated the controlling agreement and particularly Rule 121, by the failure to call O. M. Stewart to accompany the wrecking outfit and the wrecking crew on September 25, 1943.

(b) That Carman O. M. Stewart is entitled to be additionally compensated at the applicable pay rates from 10:08 P. M., September 25 to 9:00 A. M., September 28, 1943, less the amount earned within said period.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a wrecking outfit and a regularly assigned wrecking crew at Ennis, Texas.

The regularly assigned wrecking crew on September 25, 1943, consisted of the following, including their classifications and their regular assigned shop hours:

Name	Title	Regular Assigned Shop Hours at Ennis
P. Martinez	Lead Wreckerman	7:30 A. M. to 3:30 P. M.
J. D. Stewart	Carman	" " " " "
C. E. Schockelford	Carman Helper	" " " " "
Fred Calhorn	Carman	8:00 A. M. to 5:00 P. M.
O. M. Stewart	Carman	" " " " "
J. R. Hebert	Carman	" " " " "
F. J. Pastarck	Carman Helper	" " " " "
R. W. Cafoness	Carman Welder	" " " " "
G. W. Everets	Carman	" " " " "

This wrecking outfit and wrecking crew with the exception of Carman O. M. Stewart, were called at 10:08 P. M., September 25, 1943, to clear a wreck which occurred at Melissa, Texas. They arrived at the scene of the wreck at 5:00 A. M., September 26. They worked from 5:00 A. M. to 11:00 P. M., September 26. They were then relieved from 11:00 P. M., September 26, to 8:00 A. M., September 27. They then resumed work at 8:00 A. M. and completed clearing the wreck at 12 midnight, September 27, when they proceeded for Ennis, their home station, arriving there at 9:00 A. M., September 28, 1943.

Carman O. M. Stewart, regularly assigned to wrecking service, was not called on the night of September 25, 1943, to accompany the wrecking crew to Melissa, Texas.

The claim of proper compensation for Claimant Stewart has been progressed as provided in the controlling agreement up to and including the carrier's highest designated officer to handle such matters, and who in conference and subsequently, has declined to pay this claim.

calls. Therefore, the question in dispute is whether or not a reasonable effort was made to call O. M. Stewart and if Stewart was available to receive such a call. The statement of facts and the evidence at hand furnished by the carrier definitely shows the proper accomplishment of the purpose by the carrier's representatives and agents in the handling of the matter involving the calling of the wrecking crew. Mr. Stewart's contention is based upon his uncertain recollection of time and his unrecorded or unverified approximation of the time he returned to his residence. The facts and evidence properly considered can lead to but one conclusion: that Mr. Stewart was not at home at the time the wrecking crew was called and the three separate attempts were made to reach him by telephone.

It is the position of the carrier that as the claim or complaint was not presented within ten (10) days, the right to make claim or complaint ceased, under the provisions of Rule 32 of the agreement. Without waiving but insisting upon the forfeiture of the right to present this claim under the terms of the agreement, the carrier further holds that it fully discharged every obligation imposed upon it under the agreement in making every effort that anyone could reasonably expect under the circumstances to contact Carman Stewart in the same manner as it contacted all other members of the wrecking crew, which is the usual and customary manner of calling them, and if Carman Stewart is due anything, it is some criticism for his failure to be where he could be called, or to notify the office of his absence and thus avoid unwarranted delay and confusion in attempting to locate him, all of which hampered efforts to get the wrecker started and the main line opened for traffic.

CONCLUSION

It is the position of the carrier that the claim was not presented within ten (10) days, as required under the provisions of Rule 32 of the agreement, and that the right to make a claim or complaint, therefore, ceased prior to the time it was first presented in letter of October 6, 1943, from Local Chairman McElroy to Car Foreman Spencer; that every effort that could reasonably be expected was exerted by the carrier to call Carman Stewart in the usual and customary manner, and that he failed to respond to such call, as all other members of the Ennis wrecking crew did; that the claim is barred by the terms of the agreement and entirely lacking in merit.

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 waived right of appearance at hearing thereon.

The evidence and supporting data in the instant case do not warrant sustaining the employe's claim.

AWARD

Claim (a) and (b) of the employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1945.