

Award No. 1062
Docket No. 977
2-NYNH&H-CM-'45

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

(Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, Trustees)

DISPUTE: CLAIM OF EMPLOYEES:

1. That on June 13, 1941, at Hartford, Connecticut, the carrier violated the controlling agreement and Rule 111 by—
 - (a) Not calling the entire wreck crew for derailment at East Hampton, Connecticut.
 - (b) Calling and using three carmen other than those regularly assigned to the wreck crew.
2. That in consideration of the aforesaid violations, the regular wreck carmen members, J. Bailes, L. Stone, J. Rogers and J. Constantino, are each entitled to the same pay as that portion of the wreck crew used—8 hours at the time and one-half rate, from 2:00 P. M. to 10:00 P. M., June 13, 1941.

JOINT STATEMENT OF FACTS: At Hartford, Connecticut, the carrier maintains a wrecking outfit and a regularly assigned crew of nine (9) men, including the claimants. At about 1:30 P. M. on June 13, 1941, locomotive 3342 was derailed on the side track of the Summit Thread Company at East Hampton, Connecticut. A wrecking crew made up of five of the regular members of the crew and three other carmen, who were not regular members of the assigned crew, was sent to the scene of the derailment by highway truck, with necessary equipment to effectuate the rerailment of engine 3342. The four claimants were not sent because of the claim of the carrier that they were not available, whereas the employees claim that they were available. The eight carmen who were sent were gone from 2:10 P. M. to 10:00 P. M.

POSITION OF EMPLOYEES: It is our contention that Rule 111 of the controlling agreement which reads in part as follows was violated: "When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit."

The derailment was outside yard limits, Summit Thread siding, East Hampton, Connecticut, and it is evident that it was a job for the wreck crew by the fact that the wreckmaster, Mr. Cowles, was sent to the scene of the derailment.

The carrier admits that they did not call the claimants for this derailment but they are attempting to justify their position by stating that two men, Messrs. Bailes and Rogers, were not available because they were working at Burnham Pit, which is located in East Hartford. Nevertheless, the truck started from East Hartford to transport men and equipment to East Hampton. The reason for not calling Messrs. Stone and Constantino was that they had left for home, but again let me call your attention to the fact that the highway used by the truck passed both Messrs. Stone and Constantino's place of residence. The regular hours of the claimants are from 6:00 A. M. to 2:00 P. M. The claimants are entitled to the time-and-one-half rate for eight hours for not being called.

POSITION OF CARRIER: As shown in the Statement of Facts, engine 3342 was derailed on the side track of Summit Thread Company in East Hampton, Connecticut. Call for assistance was made at 1:55 P. M. and relayed to the general car foreman at 2:00 P. M. The four carmen members of the wrecking crew involved in this case had regular assignments from 6:00 A. M. to 2:00 P. M. Rule 111 provides for the use of less than the regularly assigned crew and equipment when main line operations are not interfered with. Therefore, insofar as the arbitrary requirements of the rule were concerned there was no necessity for sending the entire crew, inasmuch as engine 3342 was derailed on an industrial side track of the Summit Thread Company and did not involve interference with main line operations. The claim of the employees is predicated on the theory that Rule 111 arbitrarily required that all regular members of the wrecking crew be sent, and with which theory the carrier disagrees as not being arbitrarily required under Rule 111. However, in this particular case the information given to the general foreman indicated that at least eight men were necessary. Two of the claimants, i. e., Messrs. Bailes and Rogers, were working at Burnham Pit, at which there was no telephone connection and no other means of communication, and they were, therefore, unavailable. The other two claimants, Messrs. Stone and Constantino, had started for home and could not be reached, and were, therefore, likewise unavailable. The general foreman, accordingly, used three other carmen, not regular members of the wrecking crew, who were immediately available and, as indicated, the crew composed of eight carmen, left almost immediately by highway truck at 2:10 P. M. Had the starting of the men for East Hampton been delayed until someone could have been sent to Burnham Pit to get Bailes and Rogers and get them back to the starting point, or to have waited until all of them had arrived at their respective homes and then tried to have recalled each of them by telephone, the starting of the truck to the scene of the derailment would have been delayed for some considerable time.

The fundamental issue involved is, therefore, primarily one of fact, i. e., the availability of the four men. The employees' representatives do not concern themselves with the practical aspects of the situation as to whether or not the men were available, but rather merely hold that on the basis of their contention that the requirements of Rule 111 necessitated the sending of the full regular crew that that requirement theoretically made them all available whether that was a fact actually or not.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This case was submitted on a joint statement of facts. At Hartford, Connecticut, the carrier maintained a wrecking outfit, a regular crew of nine men including the claimants. At 1:30 P. M. on June 13, 1941, a locomotive was derailed. A wrecking crew made up of five of the regular members and three other carmen were sent out to the scene of the derailment.

The record further shows that the call for assistance reached the general car foreman at 2:00 P. M., that two of the claimants were working at Burnham Pit, where there was no telephone connection or other means of communication, their period of working ending at 2:00 P. M. The other two claimants had started for home, their period of work having ended at 2:00 P. M. Clearly there is no showing here that the claimants were available. Not being available their claim cannot be allowed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1945.