

Award No. 1065

Docket No. 985

2-TC-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. 68, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That on and since September 9, 1943, the carrier has unjustly dealt with its Nashville wrecking crew within the meaning of the controlling agreement and particularly Rule 99, when—

- a. The Southern Railway wrecking outfit and wrecking crew were called and used to clear a wreck at Mile Post 155.
- b. Proper payment to the Nashville wrecking crew for this wrecking service performed by the Southern Railway wrecking crew was finally declined.

2. That the carrier be ordered in consideration of the aforesaid to pay the Nashville wrecking crew, composed of R. E. Jackson, S. J. Crotzer, J. O. Jackson, J. B. Bonds, Allen Combs, and E. T. Greer, at straight time from 4:00 P. M., September 9, to 7:30 A. M., September 10, 1943.

EMPLOYES' STATEMENT OF FACTS: At Nashville, Tennessee, the carrier maintains a wrecking outfit and a wrecking crew, composed of employes employed in the craft of carmen. This regularly assigned wrecking crew consists of R. E. Jackson, S. J. Crotzer, J. O. Jackson, J. B. Bonds, Allen Combs and E. T. Greer, whose regularly assigned hours are from 7:30 A. M. to 4:00 P. M.

On the Eastern Division of the carrier, at Mile Post 155, a wreck occurred, which involved two cars, namely: L & N 55728 and MILW 59519; and on September 9, 1943, at about 4:00 P. M., the Southern Railway wrecking outfit and wrecking crew at Oakdale were called to clear this wreck.

This wrecking outfit arrived at the wreck at about 6:35 P. M., cleared the wreck at about 10:45 P. M., left Mile Post 155 at midnight and arrived at home point (Oakdale) at 2:00 A. M., September 10, 1943.

The claimants worked their regular assignments on September 9, 1943, and thus were available for this wrecking service at Mile Post 155.

The carrier has declined to adjust this claim for 15½ hours at straight time, and the agreement controlling is dated effective October 1, 1922.

stationed at Nashville and the derailment occurred 155 miles east of Nashville under the circumstances described. The CNO&TP wrecking outfit was stationed only 15 miles from the derailment and was used.

The employes offered no criticism of the manner in which the line was cleared on that occasion, but stated they felt that the Nashville wrecking crew should be compensated. There is no rule in any agreement which grants exclusive rights to any class of employes to clear the line of obstructions. Rule 99 of the agreement with shop employes governs the pay and working conditions of the employes referred to only when so used.

It is the duty of the carrier to clear the line of any obstruction by whatever device or means may be used to advantage to provide relief in the event of personal injuries and for the restoration of service in the shortest possible time for the benefit of the public welfare.

It is the general practice of railroads to use wrecking crews of other lines whenever it is advantageous to do so, and various agreements exist between railroads governing the use of wrecking outfits and crews.

The railway company submits that the claims made by the employes in this case are not supported by any rule of the agreement and respectfully requests that they be denied.

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.

At Nashville, Tennessee, the carrier maintained a wrecking outfit and crew. At 3:15 P. M., September 9, 1943, at Mile Post 155, a wreck occurred which involved two cars. At about 4:00 P. M., the Southern Railway wrecking outfit from Oakdale, Tennessee, which was about 15 miles from the point of the derailment, was called and cleared the wreck. The point of derailment was about 155 miles from Nashville, Tennessee, where this carrier had its wrecking outfit stationed.

The record shows that at the time of this derailment the United States Army was conducting maneuvers in this area. Troop trains were moving in both directions on this carrier. The claimants were 155 miles from the scene of the wreck, while the wrecking crew used was only 15 miles away. Troop trains were held up. It was an emergency which demanded that the tracks be cleared as soon as possible. To have called the claimants would have delayed the clearing of the track.

This referee has been furnished with the master file in Docket 964, Award 1027, of the Second Division. A careful study of that docket shows the same identical questions which are raised here were involved. This Board in Award 1027, without the aid of a referee denied the contentions of the employes and that award is controlling in this case. There was no violation of the agreement.

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.