

Award No. 1068

Docket No. 1006

2-D&SL-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. 47, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE DENVER AND SALT LAKE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That the use by the carrier of the D. & R. G. W. wrecking service employes to clear up the derailment of D. & S. L. engine 202 and three freight cars on the D. & S. L. Railroad at Trapper's Spur, Colorado, violated the service rights of the carmen (wrecking service employes) subject to the current agreement.

(b) That in consideration of the aforesaid violation, D. & S. L. Carmen (wrecking service employes) John Riedel, E. Cinea, G. H. Kahler, Carl Phillips, L. M. W. Eckhart, Tony Lombardi, Wm. Green and R. F. Emérick, be compensated by the carrier in accordance with the provisions of Rule 4 from 10:00 P. M., May 5, to 11:00 P. M., May 6, 1944, less the amount they have been paid within the spread of said hours.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a wrecking outfit and a regularly assigned wrecking crew at Utah Junction, Colorado.

The carrier called the Denver and Rio Grande Western Railroad Company wrecking service employes at approximately 10:00 P. M., May 5, 1944 and after rerailling Denver and Salt Lake engine 202 at Trapper's Spur, Colorado, they returned to the Denver and Rio Grande Western property at approximately 11:00 P. M., May 6, 1944.

The claimants are Denver and Salt Lake carmen assigned to hold themselves in readiness to be called for wrecking service.

The current agreement governing the rights of the claimants is dated April 1, 1936. Rule 80 of the current agreement provides that wrecking service will be paid for under Rule 4.

POSITION OF EMPLOYES: The employes contend that the carrier ignored the rights of its wrecking service employes when it called the Denver and Rio Grande Western wrecking service employes to reraill Denver and Salt Lake engine 202 and three freight cars at Trapper's Spur, Colorado.

We are submitting memorandum of agreement (Exhibit A), which shows that there is an assigned wrecking crew for wrecking service on the Denver and Salt Lake Railroad. We are also submitting a circular (Exhibit B) from the general car foreman's office showing that the claimants are the carmen assigned by the carrier to hold themselves in readiness to be called to perform wrecking service.

Summarization

The carrier submits that the claim as presented should be denied for reasons as follows:

(1)—The statement of dispute and claim as presented by the petitioner to the Adjustment Board is not the same as the dispute and claim handled on the property.

(2)—If the submission is not dismissed on the basis of (1) above, then the "Statement of Claim" in the jointly signed statement of July 28, 1944, by the general chairman for the petitioner and the master mechanic for the carrier, should be a basically controlling factor.

(3)—Rules 4 and 80 in the working agreement between the parties are the only rules cited by the petitioner in support of his claim, and neither of these rules are applicable to the facts of record.

(4)—Denver and Salt Lake employes have no monopoly of the work involved in clearing derailments or performing miscellaneous service that may be classed as "Wrecking Service." Such service is performed in a majority of cases on the Denver and Salt Lake and other railroads by men who are not covered by the working agreement of April 1, 1936, between the carrier and the petitioner.

(5)—Denver and Salt Lake carmen with the Denver and Salt Lake wrecking outfit from Phippsburg were used in the first instance on the derailment at Trapper and the Denver and Rio Grande Western outfit was subsequently called upon to assist in finishing the job. In his signed statement of July 28, 1944, petitioner states such procedure was proper and has been followed on previous occasions; and no penalty claim has been made by Denver and Salt Lake men.

(6)—Under the circumstances existing, the carrier would have been extremely negligent in its duty as a common carrier if it had permitted the railway to be blocked awaiting movement of the Denver and Salt Lake outfit from Utah Junction. Therefore it was obviously proper to use the Denver and Rio Grande Western derrick as was done in this instance.

(7)—Even if it had been physically possible to transport Denver and Salt Lake carmen from Utah Junction to Orestod to man the Denver and Rio Grande Western derrick in time for the purpose (which could not have been done), the Denver and Rio Grande Western Railroad would not have loaned the derrick under such conditions, Denver and Rio Grande Western employes would have objected to it and the carrier questions if Denver and Salt Lake carmen would have agreed to it.

(8)—On the basis of the whole record as herein developed, the dispute as presented and the claim as made should be dismissed and denied as being without merit.

The carrier states for the record that the statement of dispute and claim as presented by the petitioner is not the same as handled on the property; otherwise the record herein presented has been handled and discussed on the property with authorized representative of the claimants.

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 carrier maintains a wrecking outfit and crew at Utah Junction, Colorado. An engine was derailed at Trapper Spur, or mile post 158. The Denver and Rio Grande Western Railroad Company wrecker and crew were called and rerailed the engine. The Denver and Rio Grande Western wrecker was located within 30 miles of where the wreck occurred, while the claimants were 155 miles away. The record shows that mail trains were being tied up due to the wreck.

This referee has been furnished with the master file of Docket No. 964, Award No. 1027, of the Second Division. A careful study of that docket shows the same identical questions which are raised here were involved in that 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.