

Award No. 1123

Docket No. 1026

2-CRI&P-CM-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the controlling agreement, the service rights of the El Reno, Oklahoma wrecking crew were violated when the carrier used maintenance of way employes and others at Enid, Oklahoma, to rerail Soo Line cars 42558-133418 and I. C. car 25739, from about 8 A. M. to 10 P. M., on July 28, 1944.

2. That the carrier be ordered to additionally compensate the El Reno wrecking crew (Carmen J. T. Templeton, D. L. Bishop, Henry Keith, Geo. Bien and J. A. Hutson, and Carmen Helpers W. A. Martin and S. R. McGee) from 4:30 P. M., July 28 (continuous with their home station straight time hours) to 1 A. M., July 29, 1944 (the approximate arrival time at their home station from Enid) a total of eight and one-half hours each at the applicable time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains two wreckers at El Reno, Oklahoma, the Division headquarters for the Oklahoma Division; one of the one hundred and fifty ton class and one of the sixty ton class.

In accordance with Rule 114 of the controlling agreement, each of these wreckers stationed at El Reno has a regularly assigned crew composed of carmen and helpers.

On July 28, 1944, the one hundred fifty ton wrecker outfit and crew were picking up a wreck on the Panhandle Division and were not available for this wreck. Leaving the sixty ton wrecking crew available the carmen and helpers who were regularly assigned to the sixty ton wrecker on July 28, 1944, were as follows:

J. T. Templeton	Lead Carman
D. L. Bishop	"
Henry Keith	"
Geo. Bien	"
J. A. Hutson	"
W. A. Martin	Carman Helper
S. R. McGee	" "

On July 28, 1944, Section Foreman R. R. Summar and his crew, assisted by a train master, road master, and assistant road master, rerailed Soo Line

should be used by the carrier, as we do in the instant case, as our position in all future cases of a like nature.

The controlling factor in this rule is the use of the wrecking outfit. If it is used for wrecks or derailments outside of yard limits of the point where assigned, the regularly assigned crew accompanies it; if it is not found necessary to use the outfit, then the crew have no basis for claim. In the instant case it was not necessary to use any wrecking outfit.

The only basis for a claim in this case would be if a wrecking outfit and wrecking crew were regularly assigned at Enid, Oklahoma, because the derailment occurred within yard limits at Enid, the second sentence of fourth paragraph of Rule 114, reading:

"For wrecks or derailments within yard limits, sufficient members of regular crew will be called to perform the work."

but as we do not have a wrecking outfit or crew regularly assigned at Enid, there were no "sufficient members of regular crew" at Enid to be called to perform work of rerailling cars "within yard limits." Carmen at Enid would not, under the clear provision of the rule, be entitled to such work because the rule specifically provides "sufficient members of regular crew will be called" and we do not have a "regular crew" at that point.

Rule 114 makes it mandatory to use sufficient members of the wrecking crew only when a derailment, which yard forces cannot correct, occurs within the yard limits of a point at which a regularly assigned wrecking crew is located—in this case Enid, Oklahoma—and a regularly assigned crew is not assigned there, nor is a wrecking outfit stationed there. This second sentence, fourth paragraph, Rule 114, is based on the fact that where a wrecking crew is located at a point, they would be readily available if and when a derailment occurred within the yard limits at that point and yard forces were unable to correct the condition.

The only claim any member of the El Reno wrecking crew could have under Rule 114 would be if this derailment had occurred **within the yard limits at El Reno** where they are regularly assigned, and yard forces could not correct, when the second sentence, fourth paragraph of Rule 114 would apply.

We submit that it would be absurd to expect, as the employes by their claim seem to imply, that in all cases of derailments, even minor ones, the carrier could do nothing whatever to reraill cars with any employes readily available, but instead wait until a wrecking outfit and crew, which are not necessary, could be called from a point sixty miles distant (El Reno to Enid) as in the instant case, to reraill the cars, in the meantime tying up the railroad awaiting arrival of such wrecker and crew.

The rules of the agreement do not support the employes' claim and it should 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 were given due notice of hearing thereon.

Under the rules of the controlling agreement wrecking work, with certain well recognized exceptions of which the present case is not one, belongs to carmen. Under the terms of Rule 114, sufficient members of the regular crew which was located at El Reno should have been called to perform this work.

Inasmuch as the claimants are members of such regular crew, a number of the claimants equal to the number of employes used to perform the instant wrecking service should be paid the difference between what they earned and what they would have earned if they had been called.

AWARD

Claim 1 sustained.

Claim 2 sustained as above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of March, 1946.