Award No. 1124
Docket No. 1029
2-NC&StL-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. 83, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That the carrier violated the service rights of the Bruceton, Tennessee, wrecking crew under the controlling agreement, particularly Rules 125 and 126, when the G. M. & O. wrecking outfit and wrecking crew were used in wrecking service about one mile south of Mercer, Tennessee, on June 28, 1944.

That the carrier be ordered to additionally compensate its Bruceton, Tennessee, wrecking crew (Carmen C. W. Robertson, J. M. Williams, E. M. Dodd and E. L. Wilson and Carmen Helpers V. K. Scott and M. H. Higdon) on the basis set forth below:

(a) From 12:20 P. M. to 3:30 P. M. on June 28, 1944, at the pro rata rate.

(b) From 3:30 P. M. to 8:45 P. M., June 28, 1944, five (5) hours and fifteen (15) minutes at the time and one-half rate.

(c) Less the time paid for within the aforesaid date and period of time.

EMPLOYES' STATEMENT OF FACTS: On June 28, 1944, No. 151 Train, at about one mile south of Mercer, Tennessee, and approximately 75.7 miles south of Bruceton, Tennessee, derailed a car at about 11:50 A. M., due to an over-heated journal breaking off.

The G. M. & O. wrecking outfit and wrecking crew were called and departed at about 1:55 P. M. on June 28, for the scene of this derailment. The employes of this other railroad at about 3:30 P. M. on June 28, completed performing this wrecking service for the carrier.

The Bruceton, Tennessee, wrecking crew claimants are regularly employed on the repair track and in the train yards from 7:00 A. M. to 3:30 P. M., and they were available for responding to perform this wrecking service at Mercer, Tennessee, on arrival there at on Second 151 Train, which was called to leave Bruceton at 12:20 P. M.

The controlling agreement is dated effective June 1, 1940.

POSITION OF EMPLOYES: It is submitted that in the particular circumstances here involved, the Bruceton wrecking crew claimants were subject to

Attention is directed to the fact that under its express language this rule, insofar as it relates to regularly assigned wrecking crews, becomes effective only **when wrecking crews are called** for wrecks or derailments outside of yard limits. If it had been intended that in all cases of wrecks or derailments outside of yard limits, regardless of circumstances or distances involved, the carrier's wrecking outfits would be called, the rule would unquestionably have so stated.

There is nothing in either Rule 125 or Rule 126 or any other rule of the applicable agreement which prohibits the carrier from borrowing a wrecking outfit from another carrier to clear or assist in clearing a wreck at a point and under circumstances which make it impossible for the carrier to get its wrecking outfit to the scene of the accident without serious delay to traffic, especially in instances in which the main track is blocked. Neither is there anything in these or any other rules of the agreement which penalizes the carrier for meeting emergency situations in this manner.

As a matter of fact in discussing this case with carrier's director of personnel, the general chairman of the carmen conceded that in cases where persons were injured or trapped in wrecked equipment there would be no equitable grounds for such a claim as is here presented.

This claim seems to be predicated on the theory that carmen who are regularly assigned to wrecking crews are entitled to perform all wrecking service outside of yard limits. The inside title page of the applicable agreement contains the following provision:

> It is understood that this agreement shall only apply to those N., C. & St. L. employes who perform the work specified in this agreement in the Maintenance of Equipment Department, plus that which under present practices of the Railway is being done by employes of this Department.

The agreement contains no provision that carmen shall perform all wrecking service, and at the time the agreement was negotiated it was, and has been for years, the practice for the carrier to borrow or rent wrecking outfits from connecting lines when it was considered expedient to do so. This fact was known to the employe representatives who participated in the negotiations and no proposal was submitted by such representatives to restrict or discontinue such practice, and there is no mention whatever of wrecking service in the carmen's classification of work rule. Therefore it is obvious the regularly assigned wrecking crews are entitled to perform this work only **when called** for wrecks or derailments outside of yard limits as provided in Rule 126.

In conference the general chairman made reference to Award 1027 of the Second Division. The carrier respectfully submits that this award is not helpful to the employes' position. On the other hand the Division in this award recognized the right of a carrier to borrow a wrecking outfit and crew from another railroad to meet an emergency situation.

None of the claimants in this case lost any time on date of claim. All of them worked their usual eight hour assignments and several of them worked overtime on that date for which they were paid as follows:

C. W. Robertson	2 hours and 45 minutes.
J. M. Williams	2 hours and 50 minutes.
V. K. Scott	2 hours and 45 minutes.
M. H. Higdon	1 hour and 30 minutes.

All matters referred to herein have been presented, in substance, by the carrier to the general chairman of the organization representing the employes, either in conference or correspondence.

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.

As was said in Docket 1026, Award 1123, wrecking work, with certain well recognized exceptions, belongs to carmen and of course to carmen covered by the controlling agreement. This case comes within one of the exceptions to the rule. This was an emergency in which the carrier was justified in borrowing the wrecking outfit and crew from another railroad.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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