

Award No. 1126

Docket No. 1038

2-CNO-TP-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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Carmen)**

**CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That the carrier violated the controlling agreement and particularly Rules 152 and 153, when on June 11, 1940, Section Foreman Thomas and four (4) of his men were called to reraill switching engine No. 6535.

2. That the carrier be ordered to additionally compensate Carmen W. D. Bryan, L. E. Ivey, A. L. Fryar, R. H. Jonston and F. H. Cox each for five (5) hours at the pro rata rate on June 11, 1940.

EMPLOYEE'S STATEMENT OF FACTS: Switching Engine No. 6535, operated by the carrier in the McCallie Avenue yard at Chattanooga, Tennessee, was derailed at 10:25 P. M. on June 11, 1940. All wheels under the engine were on the ground.

Section Foreman Thomas and four of his men were called and assigned to assist the engine crew in rerailling this engine. The regularly assigned hours of these men were from 7 A. M. to 4 P. M. and the regularly assigned hours of these claimants were from 7 A. M. to 3:30 P. M.

This dispute has been handled on more than one occasion with the highest designated carrier officer to whom such matters are subject to appeal with the result that the carrier has declined to adjust this dispute.

The controlling agreement is dated effective March 1, 1926.

POSITION OF EMPLOYEES: It is submitted that within the meaning of the controlling agreement particularly—

(1) Rule 152 reading:

"Wrecking crews, including engineers and firemen, shall be composed of regularly assigned carmen and will be paid for such service as per general rules. Meals and lodging will be provided by the Company while crews are on duty in wrecking service."

(2) Rule 153 reading:

"When wrecking crews are called for wrecks or derailments outside yard limits the regularly assigned crew will accompany the outfit. For wrecks and derailments within the yard limits sufficient carmen will be called to perform the work if their services are needed."

stances, other than that a section gang was sent from its headquarters to the scene of the derailment and assisted the train crew in rerailing the derailed engine. Claim was made on behalf of the regularly assigned wrecking crew for seven hours travel time and two hours work time, at time and one-half. The carrier in that case stated that the engine was rerailed by the train and engine crew, under the supervision of the trainmaster, and that certain section men at Texhoma and a few additional men from Dalhart were used to do trackmen's work in connection with rerailing the engine, and also to repair the track. The employees asserted that the section gang from Dalhart took blocks, wedges and other equipment for rerailing to the scene of the derailment, and apparently urged on those grounds that the wrecking crew should have been called.

In denying the claim, the Board held that the rerailing of the engine by its train and engine crew was not a violation of the agreement, and that the evidence did not justify the claim of the employees.

In the instant claim, there was no violation of Rule 153 of the agreement; there could not have been a violation of the rule unless other employees, assisting in the rerailment of the engine, performed carmen's work. Engines and cars are often derailed and rerailed by train and engine crews. Every locomotive carries rerailing frogs. They may be blocked, clamped or spiked in place to accomplish the rerailment. If the derailment is serious, section gangs, track workers, are almost invariably called to protect the track and repair it, if necessary, and they do assist in placing the rerailing frogs when they are present. It has never been deemed to be, nor claimed on this property, that the placing of a rerailing frog is carman's work; obviously it is not, and unless carman's work was performed, there could be no violation of Rule 153.

(3) THE CLAIM IS INSUPPORTABLE UNDER THE RULES OR IN EQUITY.

The rule provides that carmen will be called for derailments within yard limits when their services are needed. Their services were not needed and they were not called, and there was, therefore, no violation of the rule.

The section gang was called to protect the track, and did assist, to the extent of helping place the rerailing frogs. That was not carmen's work. No one at the scene of the derailment performed any carmen's work, and the rule does not require that carmen be called when their services are not needed.

It is to be noted that in two of the cases, of even date with this, the claim is for six carmen; in the third it is for five carmen, apparently matching the number of men in the section gang used, by the number of claimants up to the full wrecking crew. In the claim cited at Memphis, where a section gang was called, the claim, for some reason, was more modest; there were only two claimants.

These facts and the suggestion made by the general chairman for the disposition of this and other claims by the issuance of instructions that, whenever section men are called for derailment in yard limits, carmen must also be called, clearly indicates that he placed little reliance in Rule 153 to support the claim, and it is equally persuasive that there is no equity in it.

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 controlling agreement wrecking work belongs to carmen. The carrier claims that, under the provisions of Rule 153, it is not required

to call carmen unless their services are needed and that, section men being available, the carmen's services were not needed. But the phrase in Rule 153, "if their services are needed," is but a recognition of the fact that there are exceptional cases where the work may be done by others. This case is not within the exceptions. Permitting the section men to perform the work in question was a violation of the rule.

AWARD

Claim 1 sustained.

Claim 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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