

Award No. 1128
Docket No. 1040
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 EMPLOYES
DEPARTMENT, A. F. OF L. (CARMEN)**

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

DISPUTE: CLAIM OF EMPLOYES: 1. That the carrier violated the controlling agreement and particularly Rules 152 and 153, when on November 2, 1940, Section Foreman Thomas and six (6) of his men were called to reraill switch engine No. 665.

2. That the carrier be ordered to additionally compensate Carmen W. D. Bryan, L. E. Ivey, R. J. Ingle, J. F. Henley, A. D. McHenry and J. C. Jones, each for five (5) hours at the pro rata rate on November 2, 1940.

EMPLOYES' STATEMENT OF FACTS: Switch engine 665, operated by the carrier in the 9th Street City Yard at Chattanooga, was derailed at 5 A.M. November 2, 1940. All wheels except the rear driver were on the ground.

Section Foreman Thomas and six of his men were called and assigned to assist that engine crew with the aid of another yard engine to reraill this engine. The regular hours of these section crewmen were from 7 A.M. to 4 P.M. The claimants' regularly assigned hours 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 EMPLOYES: 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."

limits, or at least, if section men are called, carmen, also, must be called. And it was the suggestion of the general chairman, in order to dispose of this and other claims, that general instructions be issued to that effect.

Another award of the Board, which is consistent in the application of the principles enunciated, is Award 425. The case covered by that award involved a line of road derailment, and there is no analogy in the circumstances, 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 employes 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 employes.

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 employes, 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.

Award 1126, Docket 1038, is controlling here and the decision must be the same.

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.