

Award No. 1177

Docket No. 1100

2-SP(PL)-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—CARMEN**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES: That carmen (regularly assigned relief outfit service employes) A. F. McDonald, F. Kimball, A. Bereese and J. Miller, are entitled to be additionally compensated at the rate of time and one-half from 5:30 A. M. to 10 A. M. on November 25, 1944, less the amount they were paid for the same period of time.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a regularly assigned relief outfit crew at Brooklyn, Oregon, and Carmen A. F. McDonald, F. Kimball, A. Bereese and J. Miller, hereinafter referred to as the claimants, were regularly assigned members of that crew, and at that time their regular assigned shift commenced at 7:30 A. M.

On November 25, 1944, these claimants were called at 5:30 A. M. to report for clearing a derailment at Cipole, Oregon. They reported at the car shop about 5:45 A. M., where they loaded a truck with jacks, cables, frogs, blocking, oxyacetylene torch and tank. These claimants then drove said truck to Cipole, at the scene of the derailment, and rerailed the cars. They completed this assignment upon returning to the shop at 10 A. M., on November 25, 1944.

These claimants were compensated for this service from 5:45 A. M. to 6:15 A. M., loading the truck, one hour preparatory time; from 6:15 A. M. to 7:30 A. M., at the time and one-half rate; and from 7:30 A. M., the starting time of their shift, to 10 A. M., the time they arrived at the shop, at straight time.

The agreement dated April 16, 1942, is controlling.

POSITION OF EMPLOYEES: It is submitted that relief outfit crews, as provided for in Rule 111 (a), and relief outfits referred to in Rule 111 (b) and (c), were created many, many years ago, and they have since been maintained for the primary purpose of clearing derailments of cars and motive power equipment or accidents occurring to such cars and motive power, whether outside of the yard limits or within the limits of yards. This practical construction of words: "derailments or accidents" and the words "outside the yard limits" and the words "inside of yard limits", is explicit in this rule. Derailments or accidents in yards or on line of road result from many causes, avoidable and unavoidable, mechanical and human failures. It is in

The said relief outfit, or any part thereof which actually constitutes the relief outfit, was not called or used in connection with the service in which the claimants were engaged during the period from 5:30 A. M. to 10:00 A. M. on November 25, 1944.

Whether the relief outfit is called and used in connection with any occurrence rests entirely within the discretion of the carrier. If it is called and used, then and then only does Rule 15 of the current agreement come into operation.

The claimants were merely called for emergency road work, namely, to assist in the rerailling of car SP 99608 at Cipole. In order to perform this work, and to get to the scene of the derailment as quickly as possible, the claimants loaded what was considered necessary tools and material into an automotive truck and proceeded to Cipole. The mere fact that an automotive truck was used as a means of conveyance from Brooklyn to Cipole for not only the claimants, but also for what was considered necessary tools and material, most certainly does not change the service performed by the claimants at Cipole from emergency road work to relief outfit service.

Rule 15 has been in existence in the same or similar language for a period of more than twenty years. At the time this rule came into being, and at all times subsequent thereto, it was understood and recognized that said rule was only applicable when the relief outfit was called and used.

The carrier directs the attention of the Division to the language contained in the statement of claim, namely, "(regularly assigned relief outfit service employees)". This statement is not correct. On November 25, 1944, only Freight Carman A. Bereese was a member of the regular assigned relief outfit crew; Freight Carman Kimball was a substitute to be used when needed, but was not an assigned member of said crew; Shop Car Inspector McDonald and Freight Carman Miller were not members of the regular assigned relief outfit crew. Even though all of the claimants were members and regularly assigned to the relief outfit crew, there is nothing in the current agreement that would preclude their being used under the circumstances involved in this case or similar circumstances to perform emergency road service, and be compensated therefor in accordance with Rule 13.

CONCLUSION: It is the carrier's position that when it compensated the claimants for service performed from 5:30 A. M. to 10:00 A. M., November 25, 1944, in accordance with the provisions of Rule 13 of the current agreement, it complied strictly with said agreement, and therefore the claim in this docket is entirely without basis and should be declined.

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 employees 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.

We find that these employees were not the regularly assigned relief outfit service crew—only one of the employees was a member of a regularly assigned relief outfit crew.

AWARD

Under the circumstances cited in this particular case, claim of employees is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of May, 1947.