

Award No. 1456

Docket No. 1376

2-MP-MA-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That rules of current agreement, particularly Rule 52(a) and 53 and 119 were violated when the carrier at Monroe, Louisiana, assigned to wrecker crew, certain work on locomotive 134, which is properly duties of machinists' craft, and so defined by aforementioned rules.

2—That accordingly the carrier be ordered to compensate one machinist and one machinist helper in the amount of eight (8) hours at rate of time and one-half—employees entitled to compensation to be determined by local machinist committee at Monroe, Louisiana.

EMPLOYEES' STATEMENT OF FACTS: As result of derailment of locomotive 134, Montrose, Arkansas, May 20, 1950, wrecker crew was called out of Monroe, Louisiana to rerail the locomotive. In the process of rerailing locomotive and placing same in condition to move to shops, the wrecker crew which is composed exclusively of employees from the carmen's craft, was directed to perform considerable work included in rules and recognized as duties of machinists and machinist helpers, i.e., disconnect tender from engine, remove eccentric rods, remove union links, block valves on center, inspect all journal boxes and bearings, brake rigging and other equipment necessary to place the engine in proper condition for movement to shops.

The agreement effective September 1, 1949 is controlling.

POSITION OF EMPLOYEES: Rule 52(a) defines work to be performed by machinists:

"Machinists' work, including regular and helper apprentices, shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling (See Note A) and installing machinery, locomotives and engines (operated by steam or other power), engine inspecting; pumps, engine jacks, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, shafting and other shop machinery, ratchet and other skilled drilling and reaming except on

to perform duties consistent with their classification, once carmen and helpers are regularly assigned, to wrecking crews. It is not a machinist's rule and does not require nor compel the carrier to use machinists on wrecking crews.

Rule 54 of the effective agreement relates to machinists and helpers in connection with work at wrecks. It reads as follows:

"WORK AT WRECKS:

RULE 54. In case of wrecks where engines are disabled, machinist and helper, if necessary, shall accompany the wrecker. They will work under the direction of the wrecker foreman, and be paid on same basis as wrecker employees."

Your Board will note from a careful reading of Rule 54 quoted above that **where engines are disabled**, machinist and helper shall accompany the wrecker, **if necessary**. It is clear that there is no requirement, even here for the carrier to call machinists or helpers to accompany the wrecker unless **engines are disabled**. Even then the carrier is not required to call machinists and helpers to accompany the wrecker **unless it is necessary**.

It is clear from Rule 54 that the carrier, in the exercise of the clear and inherent rights of management in the operation of its business, has the prerogative of making the decision of whether or not it will use machinists with the wrecking crew according to the facts in each case and based upon the necessity for the services of machinists and helpers, in accordance with the provisions of Rule 54.

The carrier was not required to call employees of the machinist craft to go with the wrecker to Montrose on May 20, 1950, because no such employees are regularly assigned to the wrecker crew. The carrier's responsible officers received the flash wire and Form 24 report from the crew of train 851 which merely stated that engine No. 134 derailed when it ran over the end of a spur track at Montrose. Derailment of an engine on a spur track while moving at slow speed such as was the case at Montrose, does not ordinarily damage an engine and engine No. 134 was not damaged by the derailment sufficiently to render it incapable of operating under its own power. There being no significant damage to the engine, there was no need to call a machinist and machinist helper to accompany the wrecker when it left Monroe. It was not then known that the engine would sustain some damage during the rerailing operation, and it could not be foreseen nor anticipated by the carrier's officers that such damage would occur. (See carrier's Exhibit A)

Furthermore, the work performed by the wrecker crew was work which was necessary to be performed in the rerailing of engine No. 134 and did not constitute repairs to said engine.

This claim should, therefore, be denied as being entirely without support under the rules, custom and practice on this railroad and without merit as a matter of equity.

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 waived right of appearance at hearing thereon.

On May 20, 1950, at 7:10 A. M., engine No. 134 was derailed at Montrose, Arkansas, when it was run off the end of a spur track while switching. Division Headquarters at Monroe, Louisiana, located 69 miles south of Montrose, was notified that engine 134 had run off the end of the spur track and that the wrecker would be needed to rerail the engine. At 7:45 A. M., the wrecker with its regularly assigned crew consisting of a car foreman, carmen and carmen helpers, departed Monroe, arriving at Montrose at 1:00 P. M. During the rerailing operations, it became necessary to disconnect the tender from the engine with the aid of a cutting torch. After the engine was rerailed, it became necessary in preparing the engine for movement to shops to remove the eccentric rods, remove union links, block the valves on center, inspect journal boxes and bearings, brake rigging and other equipment. It is clear that this work was machinists' and machinist helpers' work as defined by Rules 52(a) and 53, Agreement effective September 1, 1949.

The dispute involves the interpretation of Rule 54 of the agreement which provides:

"In case of wrecks where engines are disabled, machinist and helper, if necessary, shall accompany the wrecker. They will work under the direction of the wrecker foreman, and be paid on the same basis as wrecker employees."

This rule had its origin in Rule 68 of the agreement negotiated by the United States Railroad Administration and employees effective September 20, 1919. Under the rule as it then existed, a machinist and machinist helper were required to accompany a wrecker. It will be observed that under the present Rule 54 that a machinist and helper shall accompany a wrecker **if necessary**. It is plain that the change in the rule was intended to bring about a change in the application of this rule. It clearly indicated that a machinist and helper were not to be required on every wrecker. What then is meant by the words "if necessary" which now appear in Rule 54?

The record in the present case discloses that the information reported to Division Headquarters indicated only that engine 134 was derailed. There was nothing to indicate that the engine had suffered damage requiring the services of a machinist and helper. We do not state that this is necessarily a controlling feature as the carrier might be bound by the failure of its reporting employee to properly describe the accident or the damage caused thereby. The record shows, however, that damage to the engine had not in fact been sustained when the accident was reported or when the wrecker was sent out. The necessity for cutting the tender loose from the engine arose during the course of the rerailing operations and the additional machine work herein described resulted directly from the severance of the tender from the engine. In other words, the necessity for the services of a machinist and helper did not exist when the wrecker arrived on the scene. Such work was incidental to the rerailment operations and was not a result of the derailment itself. To say that carrier's officers were required to foresee such contingencies and send a machinist and helper with the wrecker under a rule requiring them to do so only if necessary, presupposes a power to foresee or anticipate future events. It will be observed, however, that if the nature of the accident reported was such that it could be reasonably determined that a machinist and helper would be needed, the rule would require that they be sent. But the record does not present facts from which such a conclusion could reasonably be drawn, either from the report received or the situation then existing at the scene of the derailment. Under such circumstances, the sending of a machinist and helper with the wrecker is not necessary within the meaning of Rule 54. To say that it was necessary to send them under such circumstances would amount to a rewriting of the rule by requiring, for all practical purposes, that a machinist and helper accompany the wrecker to every wreck. This was not the intent of the rule. It was the very result the change in the rule sought to avoid. We are obliged to say that a claim can be sustained only where it is shown that

the report of the wreck or the situation actually existing at the scene of the wreck, reasonably shows that the need for a machinist and helper is required. The present record will not sustain such a conclusion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1951.