

Award No. 1559

Docket No. 1452

2-UP-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement the carrier improperly augmented the wrecking crew with employees of outside industries to perform carmen's work at derailment at Fallon, California, during the period April 20, 1950, to April 29, 1950, inclusive.

2—That accordingly the carrier be ordered to compensate fifty-six (56) carmen, (whose names appear in the following list) at the rate of time and one-half for the number of hours indicated on the dates shown in connection with their respective names.

April 20, 1950—16 hours

- | | |
|------------------|-------------------|
| 1. R. L. Highers | 4. A. N. Rinehart |
| 2. O. C. Means | 5. J. G. Rivas |
| 3. A. P. Meert | 6. A. Sciacca |

April 21, 1950—17 hours

- | | |
|-------------------|-----------------|
| 1. C. R. Carlsted | 4. J. F. Crain |
| 2. J. E. Shaw | 5. E. Johnson |
| 3. R. L. Waddick | 6. E. H. Kelley |

EMPLOYEES' STATEMENT OF FACTS: On April 20, 1950, the regular assigned wrecking crew employed at Los Angeles, California, was called and sent to Fallon for a derailment involving forty-three cars.

On that day and on each of the following days until the work was completed April 29, 1950, the services of two large mobile truck cranes together with operators and six attendant employees belonging to an outside construction corporation were utilized to supplement and/or were substituted for railroad derricks and railroad employees in performing the services incidental, or necessary, in clearing up the derailment.

The members of the regularly assigned wrecking crew were compensated for wrecking service for the entire time spent by them in performing work in connection with this derailment.

to perform. Local Chairman Reinecke therefore presented claim in behalf of the regular derrick crew for 16 hours each day at the rate of time and one half for April 29 and 30, on the basis that the carrier should have avoided the aid of outside equipment and operators and should have taken two days longer to clean up the derailment rather than completing the job on April 28 when the wrecker crew was released, as stated by Mr. Reinecke, "after nine long days of service." The additional time that it would have taken to clean up the debris by using only the wrecking crew is purely conjecture on the part of Mr. Reinecke. It is significant to note his objection to the fact that "There was not a side track built around the scene of the derailment to permit the railroad derrick to handle the work." The carmen are thus endeavoring to dictate that a shoo-fly must be built around derailments and to prohibit the use of off-the-track equipment since such machines are not, of course, operated by carmen.

General Chairman Kaiser apparently recognized the absurdity of Local Chairman Reinecke's position that the derailment was cleared up too quickly and he endeavored to make the employees' position appear to have some logic by changing the claim to additionally compensate other carmen who were employed at Los Angeles on regular assignments for each day while clearing up of the derailment was in progress. In other words, the claim as submitted by General Chairman Kaiser contemplates that the locomotive should have been left derailed, the 39 cars left piled up within a space of 5 cars with two dead men in the wreckage and possibility of others, 4 tank cars containing liquid caustic soda ruptured and contents spilling out on the ground, hazard of a virtual holocaust, main line block, with nothing to be done about this situation except to await the arrival of carmen from Los Angeles, presumably regardless of the length of time it might have taken them to arrive at the scene of the disaster, and thereafter let them handle it to the exclusion of any assistance by any other men or machines.

It has been universal practice since the very beginning of railroading to use everyone available and every machine necessary to assist in clearing major derailments at the earliest possible moment and it must remain so if the carriers are to assume their responsibilities to the public, to their employees, and to themselves. The means taken by the carrier to meet this emergency were obviously not done for the purpose of economy nor to defeat any agreement, intent, or rule but were dictated by an emergency in which the carrier used its best judgment.

The employees are asking here that all past practice established of necessity be disregarded and that a new rule be written prohibiting anyone except carmen and any equipment except that operated by carmen from assisting in road wrecking work regardless of the hazard to life and property and the disruption of traffic.

The carrier submits that the employees' position is not only without support by rule but is entirely impractical in application and is confident that the Board will deny the claim in its entirety.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the organization in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the organization in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This claim is made by the carmen of System Federation No. 105 on behalf of 56 named carmen from Los Angeles, California, asking that each be compensated at time and one-half for a certain number of hours on certain days during the period from April 20, 1950 to April 29, 1950, both dates included. The claim is based on the fact that carrier used men from outside its own forces to assist it during this period in connection with a wreck it had suffered at Fallon, California, on April 20, 1950. Fallon is about 15 miles from Los Angeles.

It is fundamental that work covered by a contract with employes cannot be contracted out to others. That principle is the foundation upon which collective bargaining agreement rights rest.

When this accident happened at 8:15 A. M. on April 20, 1950 at Fallon, California, and blocked the main line of the carrier, it created an emergency situation. Because of its magnitude carrier did not have sufficient equipment of the type needed to cope with the situation at hand in order to clear the tracks within a reasonable length of time. Under such conditions it was justified in obtaining outside help to relieve therefrom. See Awards 1027, 1065 and 1068 of this Division. However, when the main line was cleared at 2:30 P. M. on April 21, 1950 the emergency so justifying ceased to exist. Undoubtedly it was desirable to have the remains of this wreck cleared from the right of way at the earliest possible date but doing so was not work of such a character as would justify the use of outside forces. In clearing up the remains of the wreck carrier was obligated to use its own forces.

There is inherent in the work of wrecking crews certain work generally recognized as carmen's work. This fact is evidenced by the requirements of Rule 137 of the parties' controlling agreement. This rule requires that regularly assigned wrecking crews will be composed of carmen. It has often been said by this Division that wrecking work in general belongs to carmen. See Awards 424, 878, 1090, 1123, 1124, and 1322.

Rule 138 of the parties' controlling agreement does not require that carrier must always call a wrecking crew for a wreck or derailment, when it is outside of yard limits. To like effect see Awards 1322 and 1482 of this Division. It may call employes of any class for that purpose. But when called such employes may only perform duties consistent with their classification. However, if carmen's duties are actually involved carmen must be called. See Awards 222 and 1482 of this Division and Rule 32 of the parties' controlling agreement. But this principle is not material here as carrier actually called its regular wrecking crew from Los Angeles and further, the men performing the work complained of were not other classes of its own forces but were forces employed from outside sources.

The work here involved is that performed by the six men employed from outside sources who acted as ground crews for the two off-track cranes. Upon the record before us we find the work these men performed was work generally recognized as carmen's work. They may have performed some work which was simply cleaning up debris. This work, carrier, by augmenting its wrecking crew in accordance with Rule 137, could have had performed by a class of its employes whose duties included it. But, carrier having mixed the two, we are not called upon to separate it but will properly classify all of it as carmen's work.

No objection is made that the claim, as here presented, does not properly reflect the number of hours these six men worked on each of the days for which compensation is asked. We will therefore assume that the claim is correct in that respect.

In view of the foregoing we deny the claim for April 20, 1950 and for all time these six men worked on April 21, 1950 prior to 2:30 P. M. but for the balance of that day and for all the days from April 22, 1950 to April 29, 1950, inclusive, the claim, as made, is sustained.

AWARD

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1952.