

Award No. 1702
Docket No. 1596
2-CRI&P-CM-'53

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. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier's failure to call the full regularly assigned wrecking crew to accompany the Des Moines, Iowa wrecking outfit and the wrecker engineer to Armourdale, Kansas on July 28, 1951 to perform rerailment service there until completed at 6 P. M. on August 7, 1951 was improper under the current agreement.

2. That accordingly the Carrier be ordered to compensate the regularly assigned crew in the amount each would have earned if called to accompany the outfit during the period set forth in one above.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains two wrecking outfits at Des Moines, Iowa, the regularly assigned crew is assigned to operate both wreckers. Carmen regularly assigned to wrecking service on July 28, 1951, were as follows:

Frank Walters—Wrecking Engineer			
Claude James	—	Lead	Carman
Lee Evans	—	"	"
S. Vasquez	—	"	"
Paul Krainovich	—	"	"
E. Cignovich	—	"	"
R. C. Dowell	—	"	"

and referred to hereinafter as the claimants.

On July 28, 1951, Wrecker 95008, stationed at Des Moines, accompanied by Frank Walters, regularly assigned wrecker engineer, was ordered to Armourdale, Kansas, to assist in rerailing cars derailed at that point.

The Des Moines wrecking outfit, with Engineer Walters, departed from Des Moines Yards at 11:30 P. M. July 28, arriving at Armourdale, Kansas, at 2:00 P. M. July 29.

We point out, too, that it is not unusual in railroad operation for one division or point to borrow a derrick from another division or point to augment the wrecking crew stationed at the point involved.

The employes, in their original claim, request payments for certain number of hours for each claimant, evidently including supposed travel and waiting time. We point out that the claimants were not required to perform any traveling or waiting and that they did, in fact, actually work their regular assigned hours at Des Moines, Iowa during the time the work at Armourdale was in progress and, therefore, lost no earnings whatsoever thereat. For example, one of the claimants, Carman James, Des Moines, claims 161¼ hours, whereas Carman Lewis, from the Armourdale roster worked 113 hours while James was actually working 55-1/6 hours at Des Moines. This would be true of the other claimants. Therefore, if your Board should not agree with the carrier's request for declination of the claims, under the circumstances involved, we submit that the claimants are not entitled to travel or waiting time as they performed no such service, and the only penalty, if any, which we say should not be assessed, is that time outside their regular assignment at Des Moines which was worked by the corresponding number of "sufficient carmen", other than the Armourdale wrecking crew, at Armourdale and then only at pro-rata rate as this and other Boards have ruled the penalty, if any, for work not performed is different from work actually performed. As a matter of fact, to have used the Des Moines men (7 in number) at Armourdale for the 10 day period would have seriously hampered our work at Des Moines and would have, of course, deprived carmen at Armourdale, their home point, who could not work until the property was restored, from earnings they made during these 10 days.

Under the circumstances involved in this case, we respectfully request denial of the employes' claim.

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 respectfully 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.

Claimants are the regularly assigned crew, except the engineer, Frank Walters, of carrier's wrecking outfit No. 95008 stationed at Des Moines, Iowa. On July 28, 1951 carrier moved this wrecking outfit from Des Moines to Armourdale, Kansas, for the purpose of using it to rerail cars. These cars had been derailed by a flood. The regularly assigned wrecker engineer, Frank Walters, accompanied the outfit but the rest of the crew, claimants here, did not. At Armourdale carrier assigned carmen at that point to the outfit and they served as the crew thereof, with the regular wrecking engineer, while it was used there. The outfit completed its work at Armourdale on August 7, 1951 after which it was returned to Des Moines, arriving there on August 9th. It is the contention of the carmen of System Federation No. 6 that doing so was in violation of their agreement with this carrier, particularly Rule 114 thereof. This rule, insofar as here material, provides:

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

That the flood at Armourdale created an emergency at that point is beyond question but that fact would not permit carrier to violate the rights

of the claimants at Des Moines, as it had no relation thereto. It could use this outfit at Armourdale but, while doing so, must respect whatever rights the crew thereof had.

Carrier also says this work was done within the yard limits at Armourdale and therefore the wrecking outfit was not taken "outside of yard limits" within the meaning of the rule. We think the language "outside of yard limits" as contained in Rule 114 relates to where the wrecking crews are assigned to their respective outfits which, as far as No. 95008 is concerned, was Des Moines.

The last sentence of the quoted provisions of Rule 114 requires carrier to use sufficient carmen, within their respective yard limits, to perform work in connection with wrecks or derailments therein. It does not, however, permit carrier, when the outfit is taken outside of such yard limits, to use **them in place of the regularly assigned crew.** Thus, while carmen at Armourdale could have been used to help the crew of No. 95008, had they been taken with the outfit, they could not be used in place of such crew.

Awards of this Division have held, under like or comparable rules, that the regularly assigned wrecking crew must accompany the outfit when taken for service outside of yard limits. See Awards 853, 857, 1069 and 1362.

Carrier further contends that one outfit can be taken to help another without the necessity of taking the regularly assigned crew thereof. It cites the Decision of Railway Board of Adjustment No. 2 in Docket 1290 in support thereof. If only the machine and engineer had been needed to help the outfit stationed at Armourdale this Decision would have application. The work performed at Armourdale by this outfit required a crew. Carrier used carmen located at that point to serve as the crew. In view of that fact the Decision has no application here. We find this contention to be without merit.

Having come to the conclusion that carrier violated its agreement with the carmen the question is, what should be allowed to these claimants in the way of compensation? What carrier here did was in violation of the scope of claimants' work rights. The penalty for work lost is the pro rata rate of the position, that is, the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. This would eliminate all traveling and waiting time but would entitle claimants to be paid at the rate of their position for all time paid Wrecking Engineer Frank Walters, either pro rata or overtime, while he worked with outfit No. 95008 at Armourdale. See Award 1362 to the same effect.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1953.