

Award No. 1819

Docket No. 1652

2-P&SF-CM-'54

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. 97, RAILWAY EMPLOYEES'

DEPARTMENT, A. F. of L. (Carmen)

PANHANDLE AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman N. J. Luman was unjustly dealt with when he was denied the right to accompany the wrecker on October 6, 1952.

2. That accordingly the Carrier be ordered to compensate him the difference between what he earned and that which he would have earned had he been assigned to accompany the wrecker.

EMPLOYEES' STATEMENT OF FACTS: Carman N. J. Luman, hereinafter referred to as the claimant, is regularly employed, bulletined and assigned as a car repairman in the car repair shop at Slaton, Texas, with first-shift assigned hours of 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., Monday through Friday, rest days Saturday and Sunday. The claimant graduated as a carman apprentice and has an established carman seniority date at Slaton, Texas, in the carmen's craft, of September 11, 1950.

Carman Helper C. B. Cooper has a seniority date as such of June 12, 1951. He was upgraded to a carman without seniority as such on October 22, 1951, and on October 6, 1952, he was regularly assigned as a trainyard inspector with second-shift assigned hours of 3:00 P. M. to 11:00 P. M.

On Monday, October 6, 1952, the Slaton, Texas, regularly assigned wrecker crew was called at 1:45 P. M. to accompany the wrecker to Mertzon, Texas, in the vicinity of San Angelo, Texas, for a rather extensive rerailment, some twenty (20) cars being involved, derailed and/or laying on their side.

There was need for an extra wrecking crew member to fill the vacancy of a regular wrecking crew member, or to augment the regular wrecking crew.

Upgraded Carman Helper C. B. Cooper, working on the second shift, was called to accompany the wrecking crew instead of the claimant who was working on the first shift.

paid for as a regular work day shall not be overtime and may be worked on consecutive Sundays."

This rule is specific that qualification of employes to do the work shall govern in the distribution of overtime. In the instant case, the character of the service performed made it necessary that an employe possessing the qualifications of Car Inspector C. B. Cooper be used. The carrier had the privilege under Rule 10 (b) to call an employe, who by his training and experience, was competent to handle the wrecking service involved in this case.

In conference held with the employes' general committee in January 1946, it was agreed that overtime earned in wrecking service should be taken into consideration in the equalization of overtime by car department forces at the home point. In other words, it was agreed that if employes of the wrecking crew during, say, a three months period, earned thirty hours overtime, that overtime must be taken into consideration in equalizing the overtime worked at the home station so that wrecking crew employes would not be entitled to any of the overtime at the home station until other employes entitled to it had obtained an amount equivalent to that earned by the wrecking crew employes. It is crystal clear from this understanding that employes at the home station who are not members of the wrecking crew have no right to participate in the distribution of overtime in wrecking service under the provisions of Rule 10 (b).

Wrecking service is specifically covered by Rule 108 of the shop crafts' agreement. Since the work involved in this dispute was solely wrecking service, the carrier asserts that if support is not to be found for the instant claim in that rule, there is no support to be found in any other rule of the agreement.

Rule 108 (b) of the controlling agreement requires that the regularly assigned crew will accompany wrecking outfits for wrecks and derailments outside of yard limits. In this case, **all regularly assigned members of the Slaton wrecking crew were used.** Rule 108 (a), reads:

"Regularly assigned wrecking crews, including wrecker engineers and firemen, will be composed of carmen where sufficient men are available and will be paid for wrecking service under Rule 9 (e). **When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.**" (Emphasis added.)

It will be noted from the last sentence of this rule, that men of **any class** may be taken as additional members of the wrecking crew to perform duties consistent with their classification. This rule does not require that such additional men must be selected in seniority order, or in accordance with their standing on the overtime board, or from any particular shift, but requires only that when such additional men are taken, they must perform duties consistent with their classification.

Carrier asserts that the employes' claim in this dispute is entirely without support under the agreement rules and should be denied in its entirety.

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.

The Carmen of System Federation No. 97 make this claim in behalf of Carman N. J. Luman. They contend he was unjustly dealt with because carrier did not use him instead of Carman C. B. Cooper to augment its wrecker crew on October 6, 1952. Based thereon they ask that he now be compensated for the difference between what he earned and what he would have earned had he been assigned to accompany the wrecker.

The facts out of which this claim arose are as follows: On Monday, October 6, 1952, about 12:28 P. M. carrier's freight train No. 129-F, while passing the stock tracks at Mertzon, Texas, had nineteen of its cars derailed. The wreckage completely blocked the mainline. Carrier had a regular wrecking outfit and crew at Slaton, Texas. It sent this wrecking outfit and crew to Mertzon to assist a wrecking outfit and crew from San Angelo, Texas, to remove the wreckage and restore the mainline to service. In addition to the regular crew carrier augmented the wrecking crew from Slaton by assigning Car Inspector C. B. Cooper thereto. Cooper was regularly assigned as a car inspector at Slaton with a work week of Monday through Friday and hours of service from 3:00 P. M. to 11:00 P. M. Carrier says it was necessary to have an additional carman experienced in wrecking service accompany the wrecker because of the seriousness of the wreck and that because Cooper had had previous experience in this field, it used him instead of claimant, who had not had such experience.

The wrecking crew was called at 1:45 P. M. and left Slaton with the wrecking outfit at 2:00 P. M. on October 6, 1952. The outfit returned to Slaton after completing the work at Mertzon, arriving at Slaton on its return at 8:46 A. M. on October 9, 1952.

Claimant was regularly assigned as a car repairman in the car repair shop at Slaton with a work week of Monday through Friday and hours of service from 8:00 A. M. to 12:00 Noon and from 1:00 P. M. to 5:00 P. M. His seniority date as a carman was September 11, 1950, which was senior to that of Carman Cooper.

Rule 108 (a) of the parties' agreement, insofar as here material, provides: "When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

This rule gives carrier the right to augment a wrecking crew with additional carmen, or members of any other class under the agreement, if the duties to be performed fall within the scope of their classification of work rule. Consequently, under this rule, carrier could have used either Carmen Luman or Cooper, as both were qualified to do the work.

The organization calls our attention to Rule 10 (b) and contends, because the need for this work arose during the hours of claimant's shift, that this rule gave him priority to the work over Cooper, who was regularly assigned to a later shift.

Rule 10 (b) provides:

"Overtime will be distributed equally among the employes of each shift by crafts, qualification of the employe to do the work to govern."

If this rule had application we would be inclined to agree with the organization. However, we think Rule 10 (b) applies only to the distribution of overtime work as it arises in connection with work regularly assigned on any shift to any craft and being performed by the employes to whom it is assigned.

Consequently we find it has no application to emergency work, such as here, when it arises in connection with a wrecking crew. In view of the foregoing we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1954.