

Award No. 1864

Docket No. 1740

2-SP(PL)-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1. That the performance of Machinists' work on Diesel Engine Units 6450, 6451 and 8298 at Indiolo, New Mexico, on April 15th, 1953 by an Electrician, the Master Mechanic and the Road Foreman of Engines violated the current agreement.

(2) That accordingly the Carrier be ordered to compensate Machinist K. J. Roberts in the amount of 20 hours at the applicable overtime rate for the period of 5:00 A. M., April 15th, to 1:00 A. M., April 16th, 1953.

EMPLOYEES' STATEMENT OF FACTS: The carrier's Diesel Engine Units 6450, 6451 and 8298 were involved in a derailment at Indiolo, New Mexico, which damaged a considerable amount of the equipment on the units to the extent that the relief outfit crew at Tucumcari, New Mexico, was called about 5:00 A. M., Wednesday, April 15, 1953, which departed for the scene of the trouble at 6:05 A. M. The carrier, however, made the election to augment this relief outfit crew by Mr. Kurz, master mechanic, Mr. Adams, road foreman of engines and Mr. Nichley, electrician, to perform the work on the diesel units of cutting out the air brake equipment, removing air brake cylinders from Diesel Unit 6450 and applying it to Diesel Unit 8298; the blocking of the engine springs, the uncoupling and coupling of the draw bars; removing brake rigging; the inspection of these units, the trucks and other parts thereof, and thereupon the rerailment of these diesel units was effectuated with the consequence that the relief crew returned to their home point—Tucumcari—arriving there at 1:00 A. M., Thursday, April 16, 1953.

The carrier was aware that considerable damage occurred to certain equipment on these diesel units as the consequence of their derailment and that an electrician, not with but without a machinist, was assigned to accompany the relief outfit crew and this is affirmed by the statement dated April 20th, 1953, signed by W. E. Edwards, local chairman, copy of which is submitted herewith and identified as Exhibit A.

In this connection statements have been made by the general chairman that machinists have been called to accompany the relief outfit at Tucumcari implying that this is the usual practice. Investigation has developed that while machinists have accompanied relief outfit it has only been when it could be reasonably determined from available information that they would be required, which as shown above was not true in this case.

It was not known when the relief outfit was called and dispatched from Tucumcari, what damage these two units had suffered, and to say that it was necessary to send a machinist on such information as was available would amount to requiring for all practical purposes that a machinist as well as employes of all other crafts accompany the relief outfit on the theory that they might be required.

Obviously the Board does not have the authority to read such an interpretation into currently existing rules.

Furthermore, under the circumstances in this case there was no basis for having a machinist accompany the relief outfit nor was there any basis for delaying the clearing of the main line due to the work which developed and which work could be performed by available forces at the derailment. In denial of somewhat similar case on another property, your Board in Award 1456 stated that "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."

Even if the application of the current agreement could be interpreted as requiring mechanics of each craft to accompany relief outfits, which the carrier does not concede, the factors specified in Award 1456 could not be interpreted as an agreement right providing for machinists to accompany the relief outfit under the available facts known at the time the relief outfit departed from Tucumcari nor did work which developed later at the derailment justify delaying the clearing of the main line until machinist could be obtained and sent from Tucumcari to the scene of the derailment.

Rule 111 was complied with by the calling of the regularly assigned relief outfit crew and while there is no restriction under current agreement for calling employes of other crafts when considered necessary for work at derailment there is nevertheless no specific agreement requirement that employes of other crafts must be called in all instances, and such interpretation of current agreement provisions has been so recognized for many years in accordance with agreement provisions on this property.

CONCLUSION

It is carrier's position that the claim in this docket is not supported by any rule of the current agreement. We request the Board to so decide.

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.

Subject claim is based upon organization's contention carrier should have assigned a machinist to relief outfit dispatched from Tucumcari in connection with derailment of two diesel units at Indiole, New Mexico. It is

asserted that prior to departure of said outfit carrier knew there was machinist work to be performed, and that such work was in fact performed at Indiolo—in violation of the agreement—by an electrician assigned to the relief outfit, and by the Division Master Mechanic and Road Foreman of Engines.

The accident here involved occurred at approximately 4:15 A. M. on April 15, 1953. It appears that the first report to carrier's representatives at Tucumcari was only that the units were derailed, that superstructure was damaged and that there was undisclosed damage underneath due to buckled rails. Carrier assigned an electrician to the relief outfit in belief some damage to the electric motors was very probable. Said outfit departed from Tucumcari at 6:05 A. M. and arrived at Indiolo at 12:20 P. M. In the meantime, at approximately 8:45 A. M., the derailed units were pulled back a few feet and some further damage resulted.

The parties disagree concerning how much, if any, work covered by Machinists' scope rule was actually performed at Indiolo. We conclude, however, that at least some machinist work was performed at the scene of the wreck.

There is no requirement under the agreement that a machinist must be assigned to accompany all relief outfits. The parties disagree as to past practice on this point but on the basis of the evidence before us we conclude that carrier has not always assigned a machinist to relief crews. Rule 111 of the controlling agreement provides that regularly assigned relief outfit crew will be composed of freight carmen, and that "when relief outfit is called for derailments or accidents, outside of yard limits at home point, the regularly assigned crew, if available, will accompany the outfit." Carrier complied with this provision.

It is the intent of the agreement that carrier shall assign machinists to a relief outfit in situations such as here involved only when carrier can reasonably be expected to have knowledge that machinist work will be required. The agreement does not impose upon the carrier an obligation to assign a machinist whenever it is merely possible machinist work will be required, for if such were the intent the carrier would be compelled to assign a machinist to all relief outfits. Had the parties intended to make this practice mandatory it is reasonable to conclude they would have negotiated a clause declaring that a machinist shall accompany every relief outfit.

In the present case the evidence does not establish that carrier had reason to know, as of time relief outfit was dispatched, that machinist work would be involved. Petitioner's position rests largely upon the advantage of knowledge gained after the relief outfit reached the scene of the wreck after 12:00 Noon. Carrier also had more detailed knowledge by 8:15 A. M. when the first division officer arrived at the scene, but this was over three hours after the relief outfit had left its home station for Indiolo. Petitioner also contends that before departing from Tucumcari the Wrecker Foreman asked for a machinist, but we find record discloses only that said Foreman inquired whether a machinist would be necessary and was advised he would not be required on basis of information then available.

In view of the foregoing we are of the opinion and find that the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1955.

DISSENT OF THE LABOR MEMBERS TO AWARD NO. 1864

The majority in rendering Award No. 1864 erred for the following reason:

First, it has been customary in the past from the record in this case to take a machinist along with the relief outfit to perform machinists' work.

Second, the rip track foreman, who is in charge of the relief outfit, asked for a machinist as usual to accompany the crew to perform machinists' work and was told that no machinists would be sent with the outfit.

Third, the majority admit that machinists' work was performed by other than machinists; the agreement makes no provision for others than machinists to perform machinists' work regardless of the amount of work performed.

For the above reasons we dissent.

(s) R. W. Blake
(s) C. E. Goodlin
(s) T. E. Losey
(s) Edward W. Wiesner
(s) George Wright