

Award No. 2185

Docket No. 1941

2-UP-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the 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 EMPLOYEES:

1. That the current agreement was violated when sufficient members of the regularly assigned wrecking crew at Hinkle, Oregon were not called to accompany the outfit with its engineer and its firemen when it was sent to perform service in connection with derailment at Wallace, Idaho, January 24 through January 27, 1954.

2. That accordingly the Carrier be ordered to compensate the following members of the Hinkle wrecking crew:

F. P. Goodwin
J. A. Pratt
M. L. Dick
J. R. Pearce

R. L. Chapman
R. Templeton
C. O. Young
M. M. Graybeal

in the amount they would have earned had they been called to perform this wrecking service.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a wrecking outfit and regularly assigned wrecking crew at Hinkle, Oregon. The above mentioned members of the crew (hereinafter referred to as the claimants) are carmen employed on three shifts upon the repair tracks and in the train yards.

On January 24, 1954, the outfit, with both the regularly assigned engineer and fireman, was dispatched for wrecking service in connection with a derailment at Wallace, Idaho. The remainder of the assigned crew was not called, but instead, members of a crew regularly assigned to a wrecking outfit stationed at Spokane, Washington, were called and used to perform service with the wrecker, engineer and fireman from Hinkle. Upon completion of the work involved, the derrick was returned to Hinkle, arriving at 1:00 P. M., January 27, 1954.

Pocatello wrecking crew together with the derrick from Carlin, Nevada, because the Pocatello derrick was too large to be used on the branch line. The Idaho Falls wrecking crew was not used. In that case, claims were filed and progressed to the general superintendent, MP&M, on exactly the same theory and contentions as are presented herein.

The claims were declined by the general superintendent, MP&M, with a position that it was not a rule violation to use the Idaho Falls derrick at Wells or any other point where needed, and that it would not have been consistent to call the crew at Idaho Falls to perform work in a territory normally serviced by the Pocatello crew. That declination was accepted by the organization, and the matter was dropped.

The organization, itself, has thus long recognized that neither Rule 138, nor any other rule in the agreement, gives the wrecking crew assigned at any terminal an exclusive right to man any specific derrick outfit. Unless there are other controlling physical factors, the logical and common procedure is to call the crew regularly assigned at the terminal in the territory of the derailment to accompany whatever outfit is used.

The right of the carrier to move or transfer derrick outfits as needed is fundamental and is recognized in the organization's letter of February 23, 1954. Since the claim apparently excludes transfers in an effort to disguise its preposterousness, the organization is, in effect, asking this Board to write a rule defining a transfer within the intent of their exception. A transfer may be either permanent or temporary to any location and for any duration dictated by the needs. It is not unusual to temporarily move or transfer a derrick outfit from one location to another location where the outfit normally stationed is tied up for repairs or is otherwise unavailable or unsuitable for the work to be performed or that may arise. In such cases, the crew assigned at the point from which transferred, or the crew assigned at a terminal within the territory to which transferred, may be called to accompany the outfit for wrecking service according to the work requirements. Such practice is a contractual right of the carrier under the present rules and is essential to operational needs as well as to avoid waste of man-power.

There is, accordingly, no merit to the organization's contention that a derrick outfit can only be used when accompanied by one particular crew, except in event of transfer as yet undefined, and the claims presented herein should be denied.

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.

Claimants are carmen regularly assigned to the wrecking crew at Hinkle, Oregon. They claim compensation for not being used from January 24, 1954 to January 27, 1954, when the wrecking outfit was called out for a derailment at Wallace, Idaho.

The applicable rule of the agreement is Rule 138 which states:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned

crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

On January 24, 1954, a derailment occurred at Wallace, Idaho, a point one hundred and twenty-nine (129) miles east of Spokane, Washington, where a sixty (60) ton derrick was maintained. Due to the insufficient capacity of the Spokane derrick, a one hundred and twenty (120) ton derrick was ordered out from Hinkle, a point one hundred and eighty-three (183) miles southwest of Spokane. The derrick from Hinkle was dispatched in charge of a derrick engineer and fireman, they being familiar with the operation of this particular derrick. Due to the fact that the derailment was in the territory usually served by the Spokane wrecking crew, the latter crew accompanied the Hinkle derrick to Wallace and was used to perform the wrecking service at that point. The claimants as members of the Hinkle wrecking crew contend they should have been used. No contention is made that the eight (8) claimants meet the requirement of a "sufficient number of the regularly assigned crew" within the meaning of Rule 138. The question is whether or not carmen at Hinkle were entitled to accompany the Hinkle derrick and be used at the derailment at Wallace.

We think that Rule 138 means that when a wrecking outfit is called out to perform wrecking work, a sufficient number of the regularly assigned wrecking crew must be used to man the outfit. This was the express holding in Award 1702 in interpreting a similar rule. Carrier contends that the practice has been to man wrecking outfits with carmen in the territory where the wreck or derailment occurred and cites instances where this was done without objection by the employees. The organization in turn cites many instances where carmen assigned to a wrecking outfit accompanied it when it was used in the territory of or beyond the points where other wrecking outfits were maintained. No controlling practice is established by either party. The rule is controlling and the carrier violated the agreement in not using claimants.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July, 1956.