

Award No. 2385

Docket No. 2190

2-CRI&P-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly augmented the wrecking crew with section employes to perform carmens' work at Breckenridge, Texas during the period of February 10 and 11, 1955.

2. That accordingly, the Carrier be ordered to compensate the carmen, whose names appear in the following list, at the applicable rate and one-half for the number of hours indicated on the dates shown in connection with their respective names on February 10 and 11, 1955:

S. B. Haws	—15 hours	A. E. Cox	—15 hours
L. W. Wilkinson	—15 hours	H. H. Saterfield	—15 hours
L. C. Callison	—15 hours	R. H. Miskell	—13 hours
J. F. Turpin	—15 hours	L. H. Jones	—13 hours
		F. C. Roten	—13 hours

EMPLOYEES' STATEMENT OF FACTS: On February 9, 1955 the regular assigned wrecking crew and derrick located at Fort Worth, Texas were dispatched to Breckenridge, Texas, to rerail four cars. Enroute, a bulldozer and the operator were picked up at Bridgeport, Texas, and accompanied the wrecking outfit to Breckenridge on February 10 and 11. The bulldozer was manned by Section Foreman W. V. Mann and eight section employes to assist in the rerailing of the derailed cars, setting blocks, making hitches with cable and chains, performing the services incidental or necessary in cleaning up the derailment. The members of the regular assigned wrecking crew were compensated for the entire time spent by them in performing work in connection with this derailment. The carmen named in the above statement of claim were on their assigned rest days and available for service as additional members of the wrecking crew.

J. F. Turpin	—Worked 11 P. M.—7 A. M. at Fort Worth on both Thursday and Friday.
A. E. Cox	—Rest day, Thursday. Worked 3 P. M.—11 P. M. on Friday at Fort Worth.
H. H. Satterfield	—Worked 11 P. M.—7 A. M., Thursday and Friday at Fort Worth.
R. H. Miskell	—Worked 3 P. M.—11 P. M., Thursday and Friday at Fort Worth.
L. H. Jones	—Relief work at Fort Worth on Thursday and Friday.
F. C. Rhoten	—Relief work at Fort Worth on Thursday and Friday.”

Thus only Hawes and Callison on both days, Wilkinson on Thursday and Cox on Friday, were technically available. They were at Fort Worth, not Breckenridge. The wrecker with full crew had already been dispatched. No transportation was available to get them to the scene of the derailment. Had any of the claimants worked at Breckenridge, they would not have worked at their regular assignment at Fort Worth.

The bulldozer with which the section hands worked is track construction and maintenance equipment. It is not a part of the Fort Worth wrecker which is manned by Fort Worth carmen.

Additional power and equipment required to hold the derailed loaded propane cars in position was supplied by the bulldozer. The bulldozer did not replace a wrecker.

The carrier wishes to call attention to Second Division Award 975, which deals with a case where the carmen's organization filed a claim for pay in behalf of eight members of a wrecking crew under somewhat similar circumstances, i. e., in that case, other than members of the wrecking crew rerailed cars. In denying the organization's claim, Referee Sharfman said:

‘ . . . The evidence or record does not, in the circumstances of this proceeding, disclose any violation of the controlling agreement.’”

The type of claim presented and the nature of work involved in the instant dispute is quite similar to that covered in the above award and it was clear to the Board at that time, that carmen do not have the exclusive right to perform all work at the scene of a derailment when a wrecker is used.

We contend there was no violation of the agreement and claim should be declined.

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 claim here made is that on Thursday and Friday, February 10 and 11, 1955, carrier augmented the wrecker crew it used at Breckenridge, Texas,

with section employes and had them improperly perform carmen's work. The relief asked, because thereof, is that each of nine (9) named carmen be compensated for a certain number of hours at time and one-half.

On Tuesday, February 8, 1955, carrier's Train No. 788 had a derailment of four (4) cars near Breckenridge, Texas. Thereafter, on Wednesday, February 9, 1955, carrier's derrick, and the entire wrecker crew regularly assigned thereto, was dispatched from Fort Worth, Texas, where it was stationed, to Breckenridge, some one hundred and thirty-five (135) miles away, to reraill the cars that had been derailed there. En route to Breckenridge the wrecker crew picked up a bulldozer and its crew, consisting of a foreman and eight (8) section men, at Bridgeport, Texas, the bulldozer being regular track construction and maintenance equipment. On Thursday and Friday, February 10 and 11, 1955, both crews worked at the rerailling of the cars, the section gang helping the wrecker crew do so but the section crew also worked at rehabilitating the track, clearing up the debris and restoring service.

Rule 114 of the parties' controlling agreement relating to "Wrecking Crews" provides, insofar as we think here material, as follows:

"Regularly assigned wrecking crews, including engineers and firemen, will be composed of carmen * * *."

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.

When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. * * *."

The cars derailed were apparently filled with propane. Carrier contends this created an emergency situation which demanded immediate action in order to prevent any possible outbreak of fire. Considering where the wrecker crew was dispatched from, and how long it took before it and the section crew arrived at the scene, hardly bears out this contention. Additional carmen could have come with the wrecker crew from Fort Worth and arrived as soon as the section crew did, since both crews apparently traveled together from Bridgeport to the place where the cars were derailed.

There is inherent in the work of wrecking crews certain work generally recognized as carmen's work. That fact is here evidenced by the language of Rule 114 hereinbefore set forth which provides such 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, 1322 and 1559.

But that duties of other classes of employes are also often involved in connection with such work is also recognized by the quoted language of Rule 114, and men of such classes may be taken along to perform such duties. This provision does not permit, however, of the less important duties of carmen's work being assigned to persons outside of the carmen's ranks. See Award 1298 of this Division.

From the record before us it would appear the foreman and section crew actually put in a total of approximately one hundred and forty-five (145) hours in connection with the derailment, of which we think about one-third was in helping the wrecking crew reraill the cars while the balance was used in connection with their own work of restoring the tracks and getting them back into service. In view of this fact we think the claim should be allowed for forty-eight and one-third (48½) hours at the pro

rata rate applicable, since that is the penalty rate for the loss of work. See Award 1678 of this Division. Just how the organization wishes to divide this amount of time among the claimants we leave to its determination.

AWARD

Claim sustained for forty-eight and one-third (48½) hours at the pro rata rate applicable.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.