

**Award No. 2738**

**Docket No. 2341**

**2-MP-CM-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Carmen)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That on April 6, 1955 the Missouri Pacific Railroad Company unjustly deprived Carmen L. B. Cottrell and H. A. Wright of their service rights in the amount of 4 hours' additional compensation in violation of the current agreement.

2. That accordingly the Missouri Pacific Railroad Company be ordered to additionally compensate these employees each on the date and in the amount aforesaid.

**EMPLOYEES' STATEMENT OF FACTS:** The Missouri Pacific Railroad Company maintains three shifts of car inspectors around the clock at Council Grove, Kansas, which is a division point 93 miles west of Osawatomie, Kansas and 134 miles east of Hoisington, Kansas.

The carrier regularly employs at this point a carman on the 7:00 A.M. to 3:00 P.M. shift, a carman on the 3:00 P.M. to 11:00 P.M. shift and Carmen L. B. Cottrell and H. A. Wright, hereinafter called the claimants, during hours and on shifts as follows:

a) Claimant Cottrell on the 11:00 P.M. to 7:00 A.M. shift Thursdays, Fridays, Saturdays, Sundays and Mondays, with off days Tuesday and Wednesday.

b) Claimant Wright on the 7:00 A.M. to 3:00 P.M. shift Fridays and Saturdays; on the 3:00 P.M. to 11:00 P.M. shift Sundays and Mondays and on the 11:00 P.M. to 7:00 A.M. shift Tuesdays, with off days Wednesday and Thursday.

or otherwise to the use of carmen at any particular seniority point for such work. Consequently, there was no violation of rule or practice.

For the reasons fully set forth above, there was no violation of the agreement or practice on this property; accordingly, for the reasons fully set forth in this submission, there is no basis for this claim and it should therefore 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 empolye or employees 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 derailment of Diesel Engine No. 4133 occurred on April 6, 1955 within the Council Grove, Kansas Yards. No wrecker or wrecker crew is maintained at Council Grove, nor did it maintain or have such special tools as a transverse jack. In the judgment of responsible officers, said derailed engine could not be safely rerailed without such special tools because of the danger of damaging the locomotive if an attempt should be made to rerail said locomotive by "pulling it on" as was the practice with steam power.

Osawatomie, Kansas, 92 miles from Council Grove, maintained a wrecker crew and the special necessary tools for rerailing. Upon direction, Wrecker Foreman, J. A. Arrington, and Carman, J. A. Bradley, who operated the truck (but was not regularly assigned to the Wrecking Crew) came from Osawatomie to Council Grove with Air Jacks, Transverse Jacks and other tools. On arrival at Council Grove, they proceeded along with the two Carmen at Council Grove from the 1st and 2nd shifts with the use of the special tools to rerail the engine. This was completed in 2 hours and 40 minutes.

No repairs were made on the derailed engine and a wrecking crew was not called out. The Council Grove Yards and Osawatomie, Kansas, were in two different point and seniority divisions.

The organization contended that only Carmen who hold seniority at the point where the rerailing is performed can be used to perform the work and that, consequently, Carmen Cottrell and Wright, who were on their day off but available for work, were deprived of their service rights in violation of the current agreement (particularly Rule 25 (a)) in the amount of 4 hours additional compensation.

The carrier stated that there is no rule which states that rerailing service may only be performed by Carmen who hold seniority at the particular point where rerailing work is to be performed.

There was no issue raised here as to whether or not only Carmen should do the rerailing as only Carmen were used. The direct question was whether Carmen as such from another seniority point could be sent in to do the rerailing in the said Yard when sufficient Carmen at the site of the derailment were available.

From the evidence, the engine could not have been properly rerailed without the transverse jacks, air jacks and other special tools that were brought to Council Grove from Osawatomie. Wrecker Foreman Arrington was sent along with the special tools to supervise the rerailing of the engine. After receipt of these special tools, the Carmen assigned to Council Grove, numbering a total of 4, were available to use the said tools for the said rerailing, within Yard limits. Only two of the said Carmen at Council Grove were used for the said rerailment out of the four Carmen doing the rerailing. The claimants at the seniority point involved were available and should have been called to help perform the said rerailment as a wrecking crew was not called out and repairs were not made on the derailed engine.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1958.