

Award No. 3697
Docket No. 3675
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION OF AMERICA,
A. F. of L.—C. I. O. (Railroad Division)

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

On December 28, 1958 a wreck occurred on the property of the carrier and Engines #5722 and #5676 were derailed. Wreck crews from the W&M and B&O performed the work at this wreck instead of the P&LE wreck crew. We do have a regular assigned wreck crew and they should have performed the wrecking work. Since this was not done the organization is asking that J. Plascjak, G. McBane, S. Filipovitz, A. Stecko, M. Novoselski, F. Kownacki, J. Stangl and A. Palahulik be compensated twenty-four (24) hours at the time and a half rate and eight (8) hours at the straight time rate of pay. This is the amount of time spent by the other wreck crews at the wreck.

EMPLOYES STATEMENT OF FACTS: This case arose at McKees Rocks, Pa. and is known as Case M-24. McKees Rocks has a wreck crew as per agreement Rule 27. This wreck crew is required to be on stand-by notice twenty-four (24) hours a day to take care of wrecks or derailments on the property of the carrier.

The derailment occurred at Dickerson Run, Pa. and for the last twenty (20) years when wrecks or derailments occurred at this point and the derrick had to be used the McKees Rocks wreck crew took care of the work.

On the day in question the McKees Rocks wreck crew was not called to do the wrecking work but outside crews from the W&M and B&O Railroads were used.

The Railroad Division, Transport Workers Union of America, ALF-CIO does have a bargaining agreement, effective May 1, 1948 and revised March

CONCLUSION

The carrier has conclusively shown that the regularly assigned members of a wreck crew are required to be called for wrecking service **only when** the wrecker is called, and then in accordance with the provisions of Rule 27 of the carmen's agreement, and that it is a matter of discretion on the part of management whether the wreck train will be called to clear wrecks or derailments on its property.

In using wrecking equipment borrowed from other carriers who were closer to the scene of the derailment than the claimants in this case, the carrier followed a practice which has been in effect for any years, not only on this property, but on railroads throughout the country.

It is quite evident that the carmen's organization is attempting to gain through an award of this Division an interpretation of the agreement which is entirely unjustified and not supported by fact or reason. A sustaining award in favor of the employes in this case would have the effect of usurping the authority vested in the carrier to operate its plant in an efficient and economical manner.

Awards of the National Railroad Adjustment Board have been cited in support of the carrier's position.

The carrier respectfully submits that the claim is without merit and 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.

Parties to said dispute were given due notice of hearing thereon.

This Claim is essentially the same as those involved in Awards 1027, 1065, 1068, 1124 and 1176 of this Division and Award 1374 of the Fourth Division, and requires the same result.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1961.

DISSENT OF LABOR MEMBERS TO AWARD No 3697

In Award 3697 the majority relies wholly upon prior awards enumerated therein as justification for denying the claim.

The facts of record in this docket are at variance with the factual situation prevailing in the dockets leading to the awards cited by the majority in Award 3697.

The carrier in its presentation to this Board contended that the controlling agreement can be set aside by "the exercise of management's prerogative," the "discretion of management," or when considered "practical and expedient," "deemed necessary" or "practical and desirable."

As in prior awards cited no contention is made that an emergency existed that would in any sense preclude the use of employes covered by the agreement on **this** railroad.

The majority has in a casual manner failed to consider the agreement between the parties on **this** railroad. We dissent.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink