

**Award No. 3730
Docket No. 3484
2-C&EI-CM-'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:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the current agreement when they:

(a) Improperly assigned other than carmen to perform carmen's work.

(b) That under the current agreement the Carrier be ordered to additionally compensate carmen R. L. Thornton, E. James, C. Mitchell, and D. E. Leach in the amount of five and one-half hours each account of carrier assigning section men to rerailed car.

EMPLOYEES' STATEMENT OF FACTS: On March 1, 1958, Train #84 derailed NYC 84589 at Vincennes, Indiana.

In the carrier's denial of the claim, they state that the section men only moved the blocks from the freight house to the point of derailment and the car inspector on duty at Vincennes, Indiana, Mr. English, then rerailed the car with the assistance of the yard engine.

This statement, on the part of the carrier, is refuted by the conductor who was assigned on the switcher which was used to rerailed the car, who has signed a statement to the effect that the section men did not just carry the blocks to the point of derailment, as the carrier states, but also assisted in the placing and removing of blocks used in rerailed this car.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective July 15, 1944, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted within the meaning of the controlling agreement, particularly Rule 101 reading:

However, the portion of the rule cited is applicable only when "wrecking crews are called." In the instant case a wrecking crew was not called — nor was one needed.

Rule 101 also provides that for wrecks or derailments within yard limits sufficient carmen will be called to perform the work. The rule obviously has no application to the situation here involved. As set out in carrier's statement of facts, there are no carmen employed at Vincennes other than a car inspector with headquarters at this point. Claimants here are employed at Evansville, Indiana. Under Rule 25 their seniority is confined to the point where employed — Evansville.

It is the carrier's position that in the circumstances here at issue, which position is borne out by the record, the services of the car inspector at Vincennes was adequate to effectuate rerailment of the car in question. If, however, the services of additional men had been required to assist the carmen on duty at Vincennes, the rules do not support claim in behalf of carmen from another yard — with seniority limited to the point of employment.

The facts and circumstances did not justify calling a wrecking crew — and a wrecking crew was not called. Claimants do not hold seniority at Vincennes and their claim, if any, must be based upon the proposition that they were not called, when needed, as members of the wrecking crew. Since this factual situation did not exist there is no basis for the claim and a denial award is therefore required.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Claimants are four of the regularly assigned wrecking crew at Evansville. The derailment blocked the main track of a single track line about 53 miles away, and was remedied in two hours and forty-five minutes by a car inspector on duty at that point, by means of a switch engine, blocking and frogs. At his request the sectionmen brought out the blocking on their motor car. Whether they also helped him to place the blocking for the rerailment is disputed.

The claim is made under Rule 101, which, so far as pertinent provides as follows:

"Regularly assigned wrecking crews * * * will be composed of carmen, where sufficient men are available, * * *."

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."

The Employes' position is stated as follows:

A. "If these rules have any purpose or meaning whatsoever, then it is evident that wrecking service is carmen's work just as if the

words 'wrecks or derailments' were written into Rule 98, Captioned 'Classification of Work'.

B. There is no exception in the rules of the controlling agreement, permitting the sectionmen to perform carmen's work, or indicating wrecking service or rerailling of cars is not carmen's work. The only exception that could possibly be applied in the rules of this agreement is in derailments only when a locomotive or car can be rerailled by the yard or train crew having such accident. Otherwise, carmen have exclusive rights to perform all wrecking and rerailling service."

The contentions are inconsistent in several respects. First, they ignore the fact that under Rule 101 wrecking crews 'will be composed of carmen, where sufficient men are available.' (Emphasis ours); thus showing that the work is not reserved exclusively for carmen.

Second, they are inconsistent in arguing that the work cannot be done by section men because not expressly authorized by rule, but in admitting that yard and train crews can do it without such express authorization.

Third, they are inconsistent in contending that Rule 101 inferentially limits wrecking work to carmen, without noting that if so it expressly limits the work to those carmen regularly assigned to wrecking crews. For the claim is that the wrecking crew should have been called, and the Rule provides that when it is called for service outside of yard limits "a sufficient number of the regularly assigned crew will accompany the outfit." (Emphasis ours).

This claim is made for the crew members supposedly not called because section men were used. But no claim is made for the crew member not called because the car inspector did the rerailling.

The Employees rely on Award 1442, involving the same parties and Rules, but that award expressly pointed out that it applied to a situation within yard limits, and that Award 1322, made under similar rules, applied to derailments on line of road. The latter precedent governs this case. The wreck crew was not called and the Rule was not violated. Awards 1322, 1482, 1757, 1763, 2049, 2050 and 2208.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of April 1961.

DISSENT OF LABOR MEMBERS TO AWARD 3730

The findings and award are seemingly based on the erroneous concept that the claim was brought in behalf of the wrecking crew for the majority

states that "the claim is that the wrecking crew should have been called . . ." However, the claim is that the carrier violated the current agreement when it "improperly assigned other than carmen to perform carmen's work." In an apparent attempt to justify the findings and award the majority states that the employes' contentions are inconsistent but ignore the primary fact that sectionmen brought out blocking to the scene of the derailment, thus depriving carmen of work to which they were entitled under the agreement.

It is not true, as stated by the majority, that the precedent in Award 1322 governs the present case. The only thing that governs this case or any other case is the agreement governing the employes involved. Under the governing agreement here carmen were deprived of work to which they were entitled under the governing agreement and they should have been compensated accordingly.

E. W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

J. B. Zink