

Award No. 3932

Docket No. 3685

2-NS-CM-'62

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. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

NORFOLK SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, particularly Rule 69, the Carrier improperly used other than Carman and Carmen Helpers to perform Wrecking Service near Plymouth, N. C., on December 12, 1958.

2. That accordingly the Carrier be ordered to compensate Carman H. F. Rogerson and Carmen Helpers D. W. Creef and N. W. Proffitt 33½ hours each at the applicable time and one-half rate of pay for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: On December 12, 1958, the Norfolk Southern Railway Co., hereinafter referred to as the carrier experienced a derailment near Plymouth, N. C. The wrecking outfit maintained at Carolina Junction, Va., was dispatched to the scene of derailment along with a crew consisting of engineer, fireman, lead carman and three (3) laborers. Upon arrival at the derailment the crew augmented by one (1) carman from Plymouth, N.C. The three laborers assigned to accompany the wrecking outfit to Plymouth performed the work of hooking, blocking, checking brass, changing brake beams and other brake rigging and other general wrecking service.

Carmen Helpers D. W. Creef and N. W. Proffitt and Carman H. F. Rogerson, hereinafter referred to as the claimants are regularly employed as carman helpers and carman respectively at Carolina Junction, Va. and were available for call.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier all of whom have declined to make satisfactory adjustment.

tractual basis and that same should be denied, and urges that your Board so hold.

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 waived right of appearance at hearing thereon.

Rule 69 provides that wrecking crews shall be composed of assigned carmen and carmen helpers. While laborers may accompany wrecking crews to perform laborers' work and apparently sometimes have actually assisted in the wrecking operation by handling the blocking used, that and all other services incidental to the performance of wrecking work belongs, under Rule 69 and similar rules, to the wrecking crew itself. Award 1298. The rule has therefore been violated.

Here it is admitted that laborers were so used; but the record does not disclose the amount of time thus spent, or how many or which carmen or carmen helpers would have been needed for that work. The case must be remanded to the property to determine the compensation due and the person or persons entitled thereto. Pay for service which is not performed is at straight time rate.

AWARD

Claim 1. Sustained.

Claim 2. Remanded for settlement consistent with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.