

Award No. 3968
Docket No. 3702
2-AT&SF-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. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
— COAST LINES —

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly used employes with the exception of the wrecker engineer, from other than the San Bernardino, California, wrecking crew to perform wrecking service at Cadiz, California, on July 26 to and including July 29, 1958.

2. That accordingly the Carrier be ordered to additionally compensate the Claimants the amount they would and should have received at their applicable rate of pay on the aforementioned dates had they properly accompanied the wrecker and performed wrecker duty. The Claimants are:

E. White
R. M. Holub
A. T. Beeker
F. H. Folger
C. M. Vaughn

A. M. Howell
J. C. Duke
C. Lopez
L. W. Bowers
R. L. Garcia

EMPLOYES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, herein referred to as the carrier, employs the above mentioned employes, hereinafter referred to as Claimants, on regularly bulletined and assigned positions as carmen, and, also, bulletins and assigns these claimants to wrecker service as regular crewmen at San Bernardino, California.

On July 26, 1958 at 7:00 P. M., the San Bernardino wrecker outfit and Wrecker Engineer R. B. Doshier were called to go to Cadiz, California,

Barstow derrick, the claim is without merit, lacks agreement support and should be denied in its entirety.

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.

The Employes agree that it is not unusual to exchange or lend derricks between points on the system, and they do not question the use of a regularly assigned wrecker engineer as a messenger to deliver a derrick at another point. But on arriving at the wreck Mr. Doshier immediately went to work with his derrick, and performed eighteen hours of work on Sunday, July 27th, and 1¼ hours on Monday, July 28th. They contend, therefore, that there was a call of the derrick and wrecker engineer for service, and not merely a transfer of the derrick to another crew by messenger.

The Carrier states that the wrecking engineer was sent only as a messenger but was put to work with the derrick on his arrival because the Barstow wrecking engineer was still trying to repair his own derrick, and was not qualified to handle the one from San Bernardino. In other words, the contention is that Doshier was called out for other than wrecking service, and was diverted to that service only after his arrival, so that Rule 108 (b) is not applicable. These statements are denied by the Employes and are not proven by the record.

The nature of its equipment and the qualifications and experience of its specialized employes are, or should be, known to Carrier, and it should have known before the larger derrick's arrival whether the Barstow wrecking engineer was qualified to operate it. In any event, it kept him engaged in the attempt to repair his own derrick while Doshier was operating the one he had brought in; it was not until after Doshier had performed wrecking service for at least 7, and perhaps 24 working hours that the Barstow engineer was placed on the derrick with him, to learn its handling, so that he could operate it until his own was repaired.

So far as the record shows, the incident constituted practically one continuous operation; Doshier accompanied his derrick and on arrival at the wreck immediately went to work on it. We cannot conclude under the circumstances that while Mr. Doshier arrived and immediately commenced work as a wrecking engineer, he started out from San Bernardino as a mere messenger, and that Rule 108 (b) therefore has no application. The situation is substantially the same as in Award 1702, in which the claim was sustained. The Carrier cites Award 1702 as holding that the assignment of only the derrick and wrecking engineer to assist the other wrecking crew would not violate the rule. But that question was not before the Board in Award 1702, and it did not so hold. This is what the Division said:

“Carrier further contends that one outfit can be taken to help another without the necessity of taking the regularly assigned crew

thereof. It cites the Decision of Railway Board of Adjustment No. 2 in Docket 1290 in support thereof. If only the machine and engineer had been needed to help the outfit stationed at Armourdale this Decision would have application. The work performed at Armourdale by this outfit required a crew."

In other words, the Carrier had cited the Decision of Railway Board of Adjustment No. 2 in Docket 1290 as in support of its contentions in Award 1702, and this Division merely pointed out a factual difference which in its opinion made the Docket 1290 Decision inapplicable. That difference would appear to make it applicable here, but Award 1702 cannot be accepted as authority for its applicability, and certainly not for its validity.

Railway Board of Adjustment No. 2's Decision in Docket 1290 has not been cited here and neither the carrier involved, the rules, nor the circumstances of that claim are indicated, except for the one point mentioned in Award 1702. Consequently it cannot be taken as authority for the proposition that under the circumstances of this case the calling of only the derrick and wrecking engineer for wrecker service do not constitute a call of a wrecking crew within the meaning of Rule 108 (b).

No authority has been cited so holding, and the admitted past practice of loan or exchange of wrecker equipment between points on this Carrier is not shown to have included operating personnel. Consequently Rule 108 (b) must be held to have been violated, as was held in Award 1702.

In Award 1702 this Division stated the measure of compensation for work lost as

"the pro rata rate of the position, that is, the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. This would eliminate all traveling and waiting time but would entitle claimants to be paid at the rate of their position for all time paid Wrecking Engineer Frank Walters, either pro rata or overtime, while he worked with outfit No. 95008 at Armourdale. See Award 1362 to the same effect."

Wrecking engineer Doshier worked with his outfit 18 hours on Sunday, when the Claimants did not work, and 14 $\frac{3}{4}$ hours on Monday, when they worked 8 hours in their regular positions. They are therefore entitled to be paid 24 $\frac{3}{4}$ hours at their regular respective rates, which the record shows to be \$2.468 for Claimants White, Beeker, Folger, Duke and Bowers, and \$2.424 for Claimants Holub, Vaughn, Howell, Lopez and Garcia.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.