

Award No. 4222
Docket No. 3855
2-NYNH&H-CM-'63

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. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the regularly assigned members of the Providence, R. I., wrecking crew were unjustly deprived of rightful earnings when the Carrier elected to use other than the Providence, Rhode Island, wrecking outfit and crew to augment the South Boston Passenger Car Yard wrecking outfit and crew at a derailment at East Taunton, Massachusetts, on December 16th, 17th, and 18th, 1958.

2. That accordingly the Carrier be ordered to compensate the following regularly assigned members of the Providence, Rhode Island, wrecking crew, each, in the amount claimed, the difference between what they received and what they would have received if properly called on the foregoing named dates:

Name of Claimant	Assigned Hours	Rest Days	Amount Claimed
S. DiThomas	7AM to 3PM	Sun. & Sat.	\$22.54
R. G. Quatro	11PM to 7AM	Mon. & Tues.	\$96.55
C. Collello	3PM to 11PM	Sun. & Sat.	\$71.36
J. R. Green	7AM to 3PM	" & "	\$22.54
H. Green	7AM to 3PM	" & "	\$22.54
F. L. Putney	7AM to 3PM	Sun. & Mon.	\$22.54
A. L. Kamps	7AM to 3PM	Sun. & Mon.	\$25.30
P. J. Laffey	7AM to 3PM	" & "	\$22.54
E. L. Thompson	7AM to 3PM	" & "	\$23.84
F. Valentine	7AM to 3PM	" & "	\$22.54

F. E. Robinson	Sun. & Mon.		
	11PM to 7AM		
	Thurs. & Fri.	Tues. & Wed.	\$97.50
	3PM to 11PM		
	Sat.		
	7AM to 3PM		
D. W. Gardner	7AM to 3PM	Sun. & Mon.	\$22.54
M. P. Goulart	7AM to 3PM	Sun. & Sat.	\$22.54
L. D'Agostino	7AM to 3PM	Sun. & Mon.	\$22.54
J. Lauriola	7AM to 3PM	Sun. & Sat.	\$22.54
J. Acciola	7AM to 3PM	" & "	\$22.54

EMPLOYEES' STATEMENT OF FACTS: On Tuesday, December 16, 1958, Train No. KN-1 was derailed at East Taunton, Massachusetts, tying up main line service between Providence, Rhode Island, Taunton and Middleboro, Massachusetts. This derailment having occurred in so-called "Boston Territory", the wrecking outfit and crew of the South Boston Passenger Car Yard was called out.

To augment the South Boston outfit an crew the carrier contracted with the McCabe Sand and Gravel Company, of Taunton, Mass., called the Taunton Sand and Gravel Company in the original claim entered by the employees, for the use of a Caterpillar Crane, manned and operated by the employees of the McCabe Sand and Gravel Company.

This outfit and crew assisted and worked with the South Boston wrecking outfit and crew the following days and hours:

"Tuesday — 12/16/58 — 9 AM to 6 PM — 9 hours
 Wednesday — 12/17/58 — 8 AM to 6 PM — 10 hours
 Thursday — 12/18/58 — 8 AM to 2 PM — 6 hours"

This dispute has been handled with the carrier officials up to and including the highest official designated to handle such disputes, on this property, all of whom having declined to adjust the matter.

The agreement of September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that under the foregoing facts and the provisions of the controlling agreement, copy of which is on file with your Board, pertinent to the current dispute:

Rule 29, which states in pertinent part:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, * * *."

Rule 110, which reads in pertinent part:

"Regularly assigned wrecking crews, including engineers, will be composed of carmen, * * *."

The rerailing and removing of damaged cars, at this derailment, for which the Caterpillar Crane, owned by the McCabe Sand and Gravel Co.,

this case the Carrier engaged the services of two off-track cranes and two bulldozers and operators from outside contractors to assist the carrier's wrecking crew at the scene of the derailment. In this case your Honorable Board denied the claim for time worked by the contractors' operators up until the time the main line was cleared of the derailment although the claim for time worked by the contractors' forces subsequent to the end of the emergency was sustained. The Award held that:

"When this accident happened at 8:15 A.M. on April 20, 1950 at Fallon, California, and blocked the main line of the carrier, it created an emergency situation. Because of its magnitude carrier did not have sufficient equipment of the type needed to cope with the situation at hand in order to clear the tracks within a reasonable length of time. Under such conditions it was justified in obtaining outside help to relieve therefrom . . . However, when the main line was cleared at 2:30 P.M. on April 21, 1950 the emergency so justifying ceased to exist. Undoubtedly it was desirable to have the remains of this wreck cleared from the right of way at the earliest possible date but doing so was not work of such a character as would justify the use of outside forces. In clearing up the remains of the wreck carrier was obligated to use its own forces." (Emphasis added)

The McCabe crane and operator were engaged at the scene of wreck in the instant dispute for three hours on December 16 and for 9½ hours on December 17 contrary to allegations of the Brotherhood that they were so engaged for nine hours on December 16, ten hours on December 17 and six hours on December 18 (The latter date they performed no service).

In summary:

- (1) The schedule rules do not require that the carrier call any particular wrecking outfit and/or Outfits to the scene of a derailment.
- (2) The Boston Tool Train was called with regular crew and augmented by an outside mobile crane needed to alleviate the serious consequences of the accident and open the main line.
- (3) The Providence Tool Train was not needed nor was it called: Rule 111 is inapplicable.
- (4) The mobile crane was used only to render a limited assistance of a specialized nature during an emergency period and was released on December 17 — before the main line was cleared by carrier's forces.

There is no violation of the cited rules.

Carrier respectfully submits 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 waived right of appearance at hearing thereon.

The Carrier alleges that the Providence Wrecking Outfit could not have been used; that it would have had to come around in back of the Boston Wrecking Outfit east of the derailment because there was no siding and no area at the west end of the wreck for disposal of rerailed cars; that in any event it would have been necessary to rent the McCabe Company highway crane for work which (for reasons not further specified), its own equipment could not practicably have accomplished; that it was not unusual to rent necessary equipment of types seldom used and therefore uneconomical to own; and finally that the blockage of the single line main track constituted an emergency warranting use of the McCabe crane.

The Employes deny all these allegations except the lack of a siding at the west end of the derailment; and allege that the work performed by the rented crane was the same as that regularly performed by Carrier's cranes from both ends of derailments and could have been so performed by them in this instance; and that the Carrier's use of 65 hours' elapsed time to clear the wreck during three days, with discontinuation of work on both intervening nights, negatives the existence of an emergency situation.

The Carrier did not show how the lack of a siding west of the derailment made a condition different from that at any wreck on a single track line where there happens to be no siding, or why such other wrecks do not necessitate an off-track crane; and certainly its leisurely clearing of the wreck does not indicate emergency conditions.

We cannot conclude from the record that when it found additional help desirable the Carrier was justified in using outside equipment and forces instead of its own most readily available outfit. Presumably the Providence outfit would have been used on approximately the same basis as the Boston outfit. Therefore Claim 1 must be sustained as to December 16 and 17, 1958, but denied as to December 18, on which the McCabe crane admittedly was not used.

Claim 2 seeks payment to the members of the Providence Wrecking Crew of specific amounts claimed to be the differences between what each actually received and what he would have received during the three days' period. The record does not show how those amounts were computed or allocated, and it is conceded that the McCabe crane was not used on the 18th. Claim 2 must therefore be remanded to the property for ascertainment of the amount, if any, payable to each claimant herein at the straight time rate for the time not worked.

AWARD

Claim 1 sustained as to December 16 and 17, but denied as to December 18, 1958.

Claim 2 sustained to the extent indicated in the Findings, and remanded to the property for the ascertainment of amounts payable.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.