

Award No. 4280
Docket No. 4165
2-CRR of NJ-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 72, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the provisions of the Agreement were violated October 16, 1960 when the Carrier sent the Bethlehem, Penna. wrecking outfit to Jersey City, N. J. without the regular assigned crew.

2. That the provisions of the Agreement were violated when the Carrier substituted other employees for the regular assigned crew on October 17 and 18, 1960.

3. That accordingly, the Carrier be ordered to compensate the following named regularly assigned Bethlehem crew in the amount they would have received had they been called:

John Muffley
Harold Wagner
Norman Reppert
Robert Muffley

Benton Breinig, Jr.
William Brown
Webster Snyder

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a wrecking outfit at Bethlehem, Penna. and a regular assigned crew. The above mentioned members of the crew are employed as carmen on the Allentown Repair Track. These men will hereinafter be referred to as claimants employed by the Central Railroad of New Jersey, and the railroad company hereinafter identified as the carrier.

On October 14, 1960 the Jersey City Service train was called at 11:15 P. M. to clear up a wreck at Cedar Lake, N. J. They rerailed three cars and set aside five other cars after which they returned to Jersey City at 8:30 A. M. on October 16, 1960.

On October 16, 1960 the Bethlehem service train derrick and two idlers were moved from Allentown to Phillipsburg and from Phillipsburg to Jersey City on train GJ-2.

In Award 1909, the position of the employees is, in effect, based on the contention that any work in connection with the rerailling of equipment is "wrecking service" and should be paid for under the applicable provisions of the agreement which, likewise is not in dispute in the instant case.

Award 2185 refers to an incident on the Union Pacific Railroad Company where they use a wrecking outfit with the regularly assigned engineer and fireman from one location and the remaining members of the service train crew from another location. This problem is not involved in the pending dispute.

Award 2404 pertains to another incident on the Union Pacific Railroad Company which involves the same situation as in Award 2185.

While none of these Awards involves the same situation covered in the claim on this property, it is interesting to note from Awards 2185 and 2404 that the Union Pacific Railroad Company cite a number of instances where derricks were used without the complete crew. In the case that occurred during the latter part of May or first part of June, 1936 the derricks from Cheyenne and Laramie were manned with the regularly assigned crews but when the Cheyenne derrick overturned and was substituted by a derrick from Rawlins that derrick was operated by the crew from Cheyenne and the Rawlins crew was not used. On the occasion during the first part of July, 1936 in which the derricks from Laramie and Rawlins were used, the regularly assigned crew was used with the Laramie derrick, but the Rawlins derrick was manned by a Cheyenne crew. On the incident that occurred in January, 1949 the Idaho Falls derrick was used with a Pocatello crew and the Carlin derrick was not manned by the regularly assigned crew.

It is further noted in the case covered by Award 2404 on November 28, 1954 when the derailment occurred, derricks were used from La Grande and Hinkle and the derrick from La Grande was not manned by the regularly assigned crew.

Under the circumstances, it is the position of the carrier that they have complied with the agreement of the employees in the instant case, and inasmuch as there is no merit to their claim, it 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 employee or employees involved in this dispute are respectively carrier and employee 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.

On October 14th, 1960, a derailment occurred at Cedar Lake, N. J., and the Jersey City service train was dispatched and arrived at the scene at 6:30 A. M. October 15th.

After rerailling five cars and setting others aside, the Jersey City crew returned to Jersey City and was relieved from duty at 8:30 A. M., October 16th.

On October 16th, Carrier dispatched the Bethlehem (Penna.) Derrick and idler to Jersey City. On October 17th the Carrier dispatched two operators of the Bethlehem wrecking crew to Jersey City to operate this equipment, and

they, in conjunction with the Jersey City service train crew, completed the re-railment and ground work on the 18th of October.

Claimants are regularly assigned members of the Bethlehem wrecking crew and claim that the Carrier violated the controlling agreement:

- 1.) In sending the wrecking outfit from Bethlehem without a sufficient number of the regularly assigned crew, and
- 2.) In substituting other employes than the regularly assigned crew on October 17th and 18th.

Carrier's position is:

- 1.) The Bethlehem equipment was merely borrowed to augment the lifting capacity of the Jersey City equipment.
- 2.) The derailment occurred in the territory served by the Jersey City crew, and a sufficient number of that crew was on hand at the scene.
- 3.) The entire service train from Bethlehem not being called, it is not mandatory to call the Bethlehem crew.

Rule 128 of the controlling agreement reads as follows:

"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. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

Our award 2185 is analagous to the situation here presented, and can be cited as highly persuasive, if not controlling, without more being said than we said there. (See also our Awards 2404 and 3365, where, under similar factual situations and similar Rules, we upheld Claimants' contentions.)

As to the Carrier's contention (3), it is sufficient to refer to our Award 3259 to support Claimants' contention that this was a "wrecking outfit" sent from Bethlehem.

Accordingly, under the applicable Rule, a sufficient number of the regularly assigned crew at Bethlehem were entitled to accompany the outfit. The use of a number of men from Jersey City indicates that this was not done.

AWARD

Claims sustained. Claimants to be compensated at their applicable rate for a time corresponding to the time for which the Bethlehem engineer and fireman were paid.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1963.