

Award No. 4600

Docket No. 4458

2-SP&S-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(SYSTEM LINES)**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when Carmen T. V. Volk and C. B. Ramey were not called to re-rail Engine 43, other than carmen being used to re-rail Engine No. 43 on November 25, 1961.

2. That accordingly the Carrier be ordered to compensate afore-said employes two hours and forty minutes at time and one-half rate for November 25, 1961.

EMPLOYES' STATEMENT OF FACTS: The Spokane, Portland and Seattle Railway Company, hereinafter referred to as the carrier, maintains at Portland, Oregon, a wrecking outfit and regular assigned wrecking crew composed of carmen of which carmen T. L. Volk and C. B. Ramey, hereinafter referred to as the claimants, are regularly assigned members thereof.

On November 25, 1961, Engine No. 43 was derailed in Portland Yard, and the following personnel were at the scene while the rerailing was taking place and assisting the operation, trainmaster Lantry, traveling engineer, Shefcheck, car foreman, Knutsen, two machinists, one car inspector, and one member of the Portland and section crew.

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 settlement. The agreement effective November 16, 1957, is controlling.

POSITION OF EMPLOYES: It is submitted that the provisions of Rule 67 of the current effective agreement, reading:

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 maintains at Portland, Oregon, a wrecking outfit and a regularly assigned wrecking crew.

The Claimants, T. V. Volk and C. B. Ramey, are regularly assigned Car-men on the shift beginning at 7:30 A. M. — Monday through Friday — at the Carrier's Portland Yard. The Claimants are also assigned members of the wrecking crew.

On Saturday, November 25, 1961, the Claimants' rest day, at approximately 6:00 P. M. three pairs of wheels of Diesel Switch Engine No. 43 became derailed on the main switching lead in the Portland Yard.

Two Machinists, who were on duty at the Roundhouse, were used to load the necessary blocking onto a Carrier truck and deliver it to the derailment scene.

Diesel Unit No. 43 was rerailed at 8:25 P. M. The record indicates that, although there were supervisory employes present, who rendered some assistance, Car Inspector Swanson—with some help from a section crew member—placed most of the blocking.

The Organization contends that sufficient Carmen were not used to perform the rerailment work and that the Carrier's action violated the pertinent part of Rule 67 — which is set forth below:

“For wreck or derailment within the yard limits, sufficient Car-men will be used to perform the work.”

The Carrier contends that passenger train 458 was due at 9:05 P. M., therefore, “time was of the essence in this re-railing operation to avoid delay to passenger train 458”; that “the only Carman readily available was Car Inspector Swanson who was on duty nearby and who was used”; that neither the wrecking outfit nor jacks were needed in the re-railing operation; and that if jacks had been needed Carmen would have been used to assist the yard crew.

In support of its position the Carrier cites Rule 44 of the controlling Labor Agreement—which reads, in part, as follows:

“When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.”

The Carrier stated that “only when the wrecking outfit is ordered out that it has been considered necessary under Rule 67 to call out the assigned wrecking crew members and, even then, under Rule 44 . . . other classes of employes

have been used to augment the regular wrecking crew whenever needed." Since the regular wrecking crew was not called, Rule 44, *supra*, must be considered inapplicable because "men of any class" cannot be "taken as additional members of wrecking crews" when such crews have not been used.

Rule 67, *supra*, requires that when a wreck occurs within yard limits, the Carrier will use sufficient Carmen to do the wreck or derailment work. As the record establishes that the Carrier failed to do so—the Board must rule in favor of the Organization. However, the time requested by the Organization in Part 2 of the Claim is excessive because the work of re-railing the engine did not begin until approximately 7:00 P. M. and was completed at 8:25 P. M. Therefore we shall grant each of the two Claimants one hour and twenty-five minutes pay at the pro rata rate.

AWARD

Claim 1 — Sustained.

Claim 2 — Sustained as per above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 9th day of December, 1964.