

Award No. 4603

Docket No. 4470

2-SOU-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. 21, RAILWAY EMPLOYEES
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

SOUTHERN RAILWAY SYSTEM

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement when on February 25, 1962 three Carmen from the K&I Terminal, Louisville, Kentucky, were sent to Whitner, Kentucky, on Southern Railway System property to rerail cars.

2. That the Carrier be ordered to additionally compensate Carmen J. D. Hines, W. F. Cooper and R. H. Williams, Danville, Kentucky, for eight (8) hours' pay at rate of time and one-half for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: On Sunday, February 25, 1962, at approximately 7:40 A. M., Southern Train No. 52, while setting off four loads and eight empties on Track No. 2 at Whitner, Ky., derailed the lead wheels of east truck, third car, Southern 36540 load, blocking entrance to Louisville Produce Market.

On the same date, February 25, 1962, at the request of Southern Railway Co. hereinafter referred to as carrier, three carmen employed by The Kentucky and Indiana Terminal Railroad Company at Louisville, Ky., were sent to Whitner, Ky., to rerail Sou. car 36540 at approximately 10:00 A. M. and consumed seven and one-half hours from the time of departure to the time of return to home station. According to Carrier's Master Mechanic, F. E. Cranfield, the three K&I Terminal Carmen arrived at the scene of the derailment at 11:30 A. M. rerailed the car and departed from the scene of the derailment at 4:00 P. M.

Carmen J. D. Hines, W. F. Cooper and R. H. Williams, hereinafter referred to as the claimants, are regularly employed by the carrier as carmen

be made for an award of any other type would be contrary to the specific terms of the controlling agreement cited and relied upon by the Brotherhood.

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.

On Sunday, February 25, 1962, at about 7:40 A. M., the lead wheels on Car No. 36540 — which was part of the make up of Train No. 52 — became derailed on Track No. 2 at the Produce Terminal Market at Whitner, Kentucky, which is on the outskirts of Louisville. The derailment reportedly blocked Tracks Nos. 1 and 2 to the Market.

Carrier Carmen are employed at Huntington, Indiana, and at Danville, Kentucky, but the Carrier does not employ Carmen at Louisville or at Whitner. The Kentucky and Indiana Terminal Railroad, however, does have Carmen based at its Youngstown Yard at Louisville, and it was three K&IT Carmen who rerailed Car 36540. Youngstown Yard is about 10 miles from Whitner.

The Claimants are based at Danville, which is some 80 miles from Whitner.

The Carrier contends that an emergency existed; that it used the most expedient means available to rerailed the car; and that the Carrier's "use of K&I Terminal Carmen was fully justified in this situation."

The Organization, on the other hand, contends that the work involved belongs to Carmen; that no emergency existed; that the nearness or distance Carmen have to travel is not a consideration within the pertinent provisions of the controlling Labor Agreement; and that the Carrier's action violated the controlling Agreement.

The fact that the work in question belongs to Carmen is established not only by the pertinent provisions of the controlling Labor Agreement, but also by the Carrier's action in having the work done by K&I Terminal Carmen.

We cannot support the Carrier's position that an "emergency existed," because the record belies such a conclusion. The record reveals that the derailment occurred at about 7:40 A. M., but the Carrier did not call the three K&I Terminal Carmen until 3 hours later. Those Carmen arrived at the derailment scene at 11:30 A. M., which was exactly 45 minutes after they were called, according to the statement of the Carrier's Superintendent of Motive Power. Certainly the Carrier's dilatory action cannot be construed as supporting the existence of an "emergency".

Neither can the Board find support for the Organization's claim, because it failed to show that the Claimants — who were on their rest day — were

available. Without evidence of the Claimants' availability, their claim cannot be allowed.

AWARD

Claim 1 — sustained.

Claim 2 — disallowed.

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.