

Award No. 4666

Docket No. 4509

2-L&N-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O.
(Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the terms of the Agreement when the Nashville Wrecking outfit was dispatched to Altoona, Ala., at 7:55 A.M. on May 15, 1962 without the regular assigned crew, and

2. When the Wrecking outfit was manned while clearing the derailment by other than the regular assigned crew, and

3. Accordingly, the Carrier should be ordered to additionally compensate each of Nashville Wrecking crew, namely: C. Reasonover, G. C. Stevens, W. T. Brown, J. T. Larkins, D. L. York and C. L. Roper, as follows:

- (a) For the necessary travel time to and from Birmingham, Ala.
- (b) For twenty-five and one-half (25½) hours, the time necessary to proceed to Altoona, clear the derailment, and return to Birmingham.
- (c) Such time to be paid on a continuous basis from 7:55 A.M. May 15, 1962, at the applicable rates of pay, with deductions for time actually paid for during that period.

EMPLOYES' STATEMENT OF FACTS: The Louisville and Nashville Railroad Company, hereinafter referred to as the carrier, maintains a wrecking outfit at Nashville, Tennessee, which was manned at the time of the subject wreck by a regularly assigned wrecking crew, composed of the following carmen, hereinafter called the claimants:

The work on the Birmingham Division was handled by the regularly assigned wrecking crew, augmented by such additional carmen as were needed. The number of additional men is always governed by the amount of work involved in each instance. The custom of calling additional forces as and when needed is practiced at all points on the carrier's property.

Without in any manner prejudicing its position as to what has heretofore been said in this submission, carrier submits that that portion of employees' claim relative to overtime should be ignored, as the claim for penalty payment is without agreement support. The organization in progressing the claim for penalty pay has not cited any rule of the agreement to support same. In this connection, this Board's attention is directed to decisions handed down in its Awards 3672 and 3967.

In view of the circumstances as set forth in the foregoing, carrier asserts 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 employees 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.

Rule 108 of the current agreement between the parties provides:

"For wrecks or derailments outside of yard limits, the regular assigned crew will accompany the wrecking outfit. . . ."

In the case at bar it is not disputed that there was a wreck outside of yard limits and that the Carrier sent a wrecking crew to Altoona, Alabama which was not the regularly assigned crew.

The language of the contract quoted above is clear and unequivocal. Under almost identical circumstances, this Board, in Awards 3259 and 3936, involving the same parties held that the above rule was violated by the Carrier.

The rule was violated.

AWARD

The claims in the instant case are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.