

Award No. 4682

Docket No. 4453

2-UP-CM-'65

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. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That on December 23, 1961 at North Platte, Nebraska the Carrier violated the controlling agreement, particularly Rule 138 thereof, when other than regularly assigned wrecking crew members were used to rerail U. P. Cars 46741 and 46130 at Sarben, Nebraska.

(2) That, accordingly, the Carrier be ordered to pay L. K. Boling and S. O. Young four hours and forty minutes at the time and one-half rate for said violation.

EMPLOYEES' STATEMENT OF FACTS: Carmen L. K. Boling and S. O. Young, hereinafter referred to as the claimants, are employed as carmen by the Union Pacific Railroad Company, hereinafter referred to as the carrier, at North Platte, Nebraska and are members of the regularly assigned wrecking crew.

On December 23, 1961, two carmen, not assigned to the wrecking crew were dispatched from North Platte at 12:20 P. M. with a truck and equipment to go to Sarben, Nebraska and rerail Union Pacific cars 46741 and 46130 which were derailed. The two carmen rerailed these cars and returned to North Platte at 5:00 P. M. same date. These facts are evidenced by Master Mechanic Dunn's letter of January 31, 1962.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest officer of the carrier, all of whom have declined to make satisfactory adjustment.

The Agreement, effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYEES: The foregoing indisputable facts reflect beyond question that a wrecking crew was called at North Platte, Nebraska to rerail cars which were derailed outside the North Platte Yard limits. The

"We are, however, of the opinion that this claim should be sustained at the pro rata rate only. While it is true that if claimant had performed the work on his day off his rate would have been time and one-half, however, the penalty rate for depriving an employe of work is the pro rata rate of the position."

See also Second Division Awards 2346 (Referee Carter), 2695 (Referee Begley) and 3045 (Referee Whiting).

The claim should be declined.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the organization in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the organization in such submission, which cannot be forecast by the carrier at this time and have not been answered, in this, the carrier's initial submission.

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 were given due notice of hearing thereon.

The Claimants, Carmen L. K. Boling and S. O. Young, are regularly assigned to the wrecking crew at Carrier's facility at North Platte, Nebraska.

On December 23, 1961, two empty stock cars (UP 46741 and 46130) were derailed at Sarben, Nebraska, which is about 29 miles from North Platte. On that same date — which was a rest day for each Claimant — two repair track Carmen, who were not assigned to the wrecking crew, but who were on duty at North Platte, were sent from North Platte with a truck and the necessary tools and equipment to Sarben. The men left North Platte at 2:20 P.M., rerailed the cars, and returned at 5:00 P.M. the same day.

The Organization contends that the two Carmen who did the work comprised a wrecking crew or outfit and that, under the provisions of Rule 138 of the controlling Labor Agreement, "the Carrier is contractually obligated to use a sufficient number of the regularly assigned wrecking crew members to perform the work of rerailing cars outside of yard limits".

The Carrier's position is that the work was a simple rerailing operation involving the use of frogs and pulling the cars back on the rails, and, accordingly, neither the wrecker nor the wrecking crew were called out.

Rule 138 of the controlling Labor 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."

The record and the rule, *supra*, do not support the Organization's position. The wrecking crew or outfit was not called and, therefore, the Carrier had no obligation to call "a sufficient number of the regularly assigned crew" to "accompany the outfit".

The Carmen who performed the rerailing work in this dispute, along with their truck and the equipment, did not constitute a wrecking outfit. In Second Division sustaining Award No. 1559, wherein a Rule identical with Rule 138 was involved, the Board, in part, held:

"Rule 138 of the parties' controlling agreement does not require that carrier must always call a wrecking crew for a wreck or derailment, when it is outside of yard limits."

Also in Second Division sustaining Award No. 1909 involving a rule very similar to Rule 138, the Board, in part, held:

"The fact that it was not deemed necessary in this case to call the outfit but only the equipped truck * * *"

gives additional and persuasive support to the Carrier's position. Accordingly, we must deny the Organization's claim.

AWARD

Claim denied.

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.