

Award No. 4734

Docket No. 4557

2-C&NW-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier improperly failed to call the necessary number of the regularly assigned wrecking crew, as may be required, at a wreck that occurred at Brampton, Michigan on November 29, 1962.

2. That accordingly the Carrier be ordered to additionally compensate Carmen W. Philips, G. LaCombe, W. Hamis and E. W. DuFour each in the amount of one hour preparatory time at their regular hourly rate of pay, from 12:30 A. M. to 1:30 A. M., November 29, 1962, and 5½ hours each at the time and one-half rate from 1:30 A. M. to 7 A. M. on November 29, 1962.

EMPLOYEES' STATEMENT OF FACTS: On November 28, 1962, the Green Bay wrecker outfit was dispatched by freight train to Brampton, Michigan, without any of the crew accompanying said outfit.

On November 29, 1962, the wrecking engineer, one ground man and a foreman were ordered to prepare themselves to depart at 1:30 A. M., from Brampton, Michigan, by automobile. The three men arrived at point of wreck at 4:30 A. M., November 29 and performed the necessary wrecking duties augmented by four carmen from Escanaba, Michigan. The duties were completed at 10:30 A. M. on November 29 and the crew departed from Brampton, Michigan at 10:30 A. M., arriving at Green Bay at 2:30 P. M. the same date.

The claimants were regularly assigned members of the wrecking crew located at Green Bay, Wisconsin.

The dispute was handled with carrier officials designated to handle such affairs, who all decline to adjust the matter.

The agreement effective July 1, 1921, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that when the carrier elected to use four carmen from Escanaba, Michigan to augment part of the regu-

requirement under existing agreements that additional men from Green Bay be used in this case. In the circumstance the carrier submits that the claim in this case should be denied in its entirety.

While therefore there is no basis for a sustaining award in this case, if for any reason this Board feels the agreement was in any way violated claimants having been fully employed are entitled at most to nominal damages. See Third Division NRAB Award 11881.

All information contained herein previously has been submitted to the employes during the course of the handling of this case on the property and is hereby made a part of the particular question here in dispute.

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 Organization contends that the Green Bay wrecker outfit was used on wrecking service at Brampton on November 29, 1962, with only the engineer, a foreman and a groundman of the regular crew, assisted by four carmen from Escanaba, and that this constituted a violation of Rule 127, which requires the use of "all or part of regularly assigned wrecking crews as may be required".

The Carrier contends, on the contrary, that a wrecker outfit from Escanaba, about 13 miles from Brampton, consisting of a highway truck with a regularly assigned wrecking crew, was sent out on November 17th to clear the wreck, and that its limited capacity was insufficient to rerail the cars, although it cleared the line, and that on November 29th, the wrecker outfit was therefore sent out from Green Bay, 127 miles away, to assist the Escanaba crew, and that the three members of the Green Bay wrecking crew were all that were required for that purpose.

The Organization answers that the Escanaba truck is not actually a wrecker outfit and is not equipped to handle wrecks or major derailments; that a bulldozer rather than the truck cleared the line on the 17th, and that the truck was not used at all on November 29th except to bring out the Escanaba men; it adds: "So far as is known by our Organization, there has not been a wrecker outfit in Escanaba, Michigan, since 1954". The question thus presented is whether what the Carrier calls a "truck wrecker" is properly a wrecker outfit at all, although it is not directly denied that the Escanaba carmen sent with it were regularly assigned for wrecking duty like the Green Bay wrecking crew; the objection made concerning them is not that they were not the Escanaba wrecking crew, but that they were not part of the Green Bay crew, and therefore could not properly be used with it under Rule 127.

Since the record includes no evidence, but only the parties' conflicting statements, this Division is unable to determine whether on November 29 the Escanaba carmen were used to assist the curtailed Green Bay wrecking crew in

violation of Rule 127, or whether the Green Bay wrecking outfit, with as many of its crew as required, were used to assist a wrecking outfit and crew from Escanaba. In the absence of evidence that the rule was violated, the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.