

Award No. 4832

Docket No. 4679

2-B&M-CM-'66

**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. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)
BOSTON AND MAINE RAILROAD**

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the controlling agreement, it was improper to send the East Deerfield wreck train to White River Jct., Vt., on October 28, 1962, without the regular assigned wrecking crew.

(2) That accordingly, the Carrier be ordered to compensate Carmen E. J. Boullie, K. D. Johnson, O. J. Nadeau, R. J. Ethier and R. W. Wallner in the amount of six (6) hours at the rate of time and one half on account of the fact that they were not allowed to accompany the wrecking outfit.

EMPLOYEES' STATEMENT OF FACTS: On October 28, 1962, the East Deerfield wrecking outfit was called for a wreck at Bath, N. H. The wrecking outfit left East Deerfield, Massachusetts at 10:26 P.M. on October 28, 1962, but the regular assigned crew members were not allowed to accompany the outfit. Instead, they were called to report to East Deerfield shops at 4:30 A.M. on October 29, 1962, and were transported to White River Jct., Vt. by automobile, where they were put on the wreck train to Bath, N. H.

This dispute has been handled with all carrier officers authorized to handle grievances, including the highest designated official, with the results that he, too, declined to adjust it.

The agreement dated April 1, 1937, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that regularly assigned wrecking crew will accompany the outfit, for all wrecks outside of yard limits, as per Rule No. 113 of our working agreement, which reads as follows:

"When wrecking crews are called for wrecks or derailments outside of yard limits, 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 carrier has already paid the claimants the equivalent of a day's pay for unproductive travelling and waiting allowance, and it is inconceivable that it should be further penalized by having to pay for additional unproductive time between the hours of 10:26 p.m. on Sunday, October 28, to 4:30 a.m. on Monday, October. 29.

In the instant case wreck service and rerailling operations were scheduled to commence at about 8 a.m. on Monday, October 29. Let us assume that the only scheduled freight train available out of East Deerfield was at 9 a.m. on Sunday instead of 10:26 p.m. If the employees' theory or interpretation is sustained, the claimants would be entitled to 19½ hours for being home with their families.

Without prejudice to the foregoing, the claim is made for time and one-half rates. Your board has ruled previously (in awards too numerous to mention) that work not performed is only payable at straight-time rates.

In view of the fact that the carrier merely transferred its equipment to White River Junction, at which point the claimants were "called," there can be no basis for claim.

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 the right of appearance at hearing thereon.

The East Deerfield wrecker left by regular freights at 10:26 p.m. for White River Junction, which it left at 6:00 the following morning with its own crew and the White River Junction wrecking outfit for the wreck at Bath. The East Deerfield wrecking crew did not accompany the outfit to White River Junction, but were called that night for 4:30 a.m., when they were taken by automobile to join it.

The Carrier maintains that the Claimants' outfit was not called for the wreck, but was "transferred to the jurisdiction of the Car Department at White River Junction," and that the use of claimants was necessitated because "the Railroad did not have enough carmen from White River Junction to man the transferred outfit * * *." Apparently the Carrier knew that fact the previous night, since it then called the Claimants for next morning.

In Award 4509, where a similar defense had been made, this Division said:

"Carrier seeks to call this a transfer of equipment from Portland to Salem, but it is clear from this record that the outfit was called for use at the Bush derailment."

It seems obvious that in this instance likewise the outfit was called for the Bath wreck, and that under Rule 113 the crew should have accompanied it. See Awards 853 and 857 (both without referees), 1702, 4509, 4666 and 4675.

The Claim should be sustained at pro rata rate.

A W A R D

Claims sustained in accordance with the Findings.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.